ITEM 3

TEST CLAIM

FINAL STAFF ANALYSIS

Education Code Sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, 76246

Statutes 1975, Chapter 816 (S.B. 182); Statutes 1976, Chapter 1010 (A.B. 3100); Statutes 1976, Chapter 1297 (S.B. 1493); Statutes 1980, Chapter 1347 (A.B. 2168); Statutes 1983, Chapter 498 (S.B. 813); Statute 1989, Chapter 593 (S.B. 1546); Statutes 1993, Chapter 561 (A.B. 1539); Statutes 1995, Chapter 758 (A.B. 446); Statutes 1996, Chapter 879 (A.B. 1721); Statutes 1998, Chapter 311 (S.B. 933); Statutes 1998, Chapter 846 (S.B. 1468); Statutes 2000, Chapter 67 (A.B. 2453)

Student Records

02-TC-34

Riverside Unified School District and Palomar Community College District, Co-Claimants

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ITEM 3

TEST CLAIM

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Education Code Sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, 76246

Statutes 1975, Chapter 816 (SB 182); Statutes 1976, Chapter 1010 (AB 3100); Statutes 1976, Chapter 1297 (SB 1493); Statutes 1980, Chapter 1347 (AB 2168); Statutes 1983, Chapter 498 (SB 813); Statute 1989, Chapter 593 (SB 1546); Statutes 1993, Chapter 561 (AB 1539); Statutes 1995, Chapter 758 (AB 446); Statutes 1996, Chapter 879 (AB 1721); Statutes 1998, Chapter 311 (SB 933); Statutes 1998, Chapter 846 (SB 1468); Statutes 2000, Chapter 67 (AB 2453)

Student Records

02-TC-34

Riverside Unified School District and Palomar Community College District, Co-Claimants

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EXECUTIVE SUMMARY

Background

This test claim addresses access to and privacy of the records of pupils in kindergarten through 12th grade (K-12) school districts and students in community colleges.

Test Claim Statutes

The test claim statutes are all part of two larger statutory schemes governing K-12 school district and community college district management of pupil and student records. The test claim statutes address various areas of pupil and student record management including the establishment, maintenance, and destruction of records; charges for copies of transcripts; regulations regarding evaluation of achievement; transfer of pupil and student records; transfer of pupil records for foster children; release of information to peace officers; furnishing of pupil and student information in compliance with a court order or subpoena; and notice to others concerning a student's disciplinary records.

Education Code sections 49060 and 76200 provide that the legislative intent of the two statutory schemes is to resolve potential conflicts between California law regarding pupil/student records and the federal Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g) in order to ensure the continued receipt of federal funds by K-12 school districts and community colleges, and to revise generally and update the law relating to pupil and student records.[1] In this context the Legislature has added and amended various code sections within the statutory schemes governing management of pupil and student records. As a result, although

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[1] See Education Code sections 49060 and 76200 for legislative intent.

FERPA and other federal laws parallel California laws regarding certain aspects of pupil and student record management, California law goes beyond federal law in other aspects.

The claimants assert that the test claim statutes impose state-mandated activities that constitute new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and seek reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the test claim statutes.

The California Community Colleges Chancellor's Office argues that the test claim, as applicable to community colleges, should be denied in its entirety because the test claim statutes: (1) constitute a federal mandate; (2) do not require any activities either pursuant to their plain language or because the activity is the result of an underlying discretionary activity; and (3) do not constitute new programs or higher levels of services as the activities were required by prior state and/or federal law.

Conclusion

Staff concludes that Education Code sections 49069.3, 49069.5, and 49076.5 constitute reimbursable state-mandated programs on kindergarten through 12th grade school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

4. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the

new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Staff further concludes that Education Code 76234 constitutes a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activity:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

In addition, staff concludes the fee authority to charge a fee that does not exceed the actual cost of furnishing copies of any pupil/student records, set forth in Education Code sections 49065 and 76223, is applicable to the state-mandated programs described above. This fee authority does not extend to furnishing the first two transcripts of former pupils' records/students' records, or the first two verifications of various records of former pupils/students, or the search for or retrieval of any pupil/student record. Therefore, any revenue resulting from the fee authority set forth in Education Code sections 49065 and 76223 is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil/student records.

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and partially approve this test claim.

STAFF ANALYSIS

Claimants

Riverside Unified School District and the Palomar Community College District

Chronology

06/23/03	The claimants, Riverside Unified School District and the Palomar Community College District, file test claim with the Commission on State Mandates ("Commission")
07/08/03	Commission staff issues completeness letter and requests comments
08/14/03	The Department of Finance (Finance) requests an extension of time for comments to September 8, 2003
08/18/03	Commission staff grants extension of time for comments to September 8, 2003
08/21/03	The California Community Colleges, Chancellor's Office (Chancellor's Office) requests an extension of time for comments, to October 11, 2003
08/28/03	Commission staff grants extension of time for comments to October 11, 2003
09/15/03	Finance files comments on the test claim
10/10/03	The claimants file response to the comments by Finance
10/10/03	The Chancellor's Office requests an extension of time for comments to December 15, 2003
10/17/03	Commission staff grants extension of time for comments to December 15, 2003
10/31/03	Finance requests an extension of time for comments on group of test claims including 02-TC-34 to February 2004
11/07/03	Commission staff grants extension of time for comments on group of test claims to February 7, 2004
02/06/04	The Chancellor's Office requests an extension of time for comments to March 9, 2004
02/09/04	Commission staff grants extension of time for comments to March 9, 2004
02/18/04	Finance requests an extension of time for comments on group of test claims including 02-TC-34 to August 9, 2004
02/18/04	Commission staff grants extension of time for comments to May 18, 2004
03/16/04	The Chancellor's Office files comments on the test claim
04/28/04	The claimants file response to the comments by the Chancellor's Office
01/29/09	Commission staff issues draft staff analysis

02/11/09	Finance requests an extension of time for comments on the draft staff analysis and postponement of hearing date to May 29, 2009
02/13/09	Commission staff grants extension of time to file comments and request for postponement of hearing to May 29, 2009
04/13/09	Co-claimant, Riverside Unified School District files comments on the draft staff analysis
05/13/09	Commission staff issues final staff analysis

Background

This test claim addresses the access to and privacy of the records of pupils in kindergarten through 12th grade (K-12) school districts and students in community colleges.

Test Claim Statutes:

The test claim statutes, Education Code sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, and 76246 are all part of two larger statutory schemes (Education Code sections 49060 – 49085, and 76200 – 76246) governing K-12 school district and community college district management of pupil and student records. The test claim statutes address various areas of pupil and student record management for K-12 school districts (Ed. Code, §§ 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, and 49078) and community college districts (76220, 76223, 76225, 76234, 76244, 76245, and 76246) including the establishment, maintenance, and destruction of records; charges for copies of transcripts; regulations regarding evaluation of achievement; transfer of pupil and student records; transfer of pupil records for foster children; release of information to peace officers; furnishing of pupil and student information in compliance with a court order or subpoena; and notice to others concerning a student's disciplinary records.

Education Code sections 49060 and 76200 provide that the legislative intent of the two statutory schemes is to resolve potential conflicts between California law regarding pupil/student records and the federal Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g) in order to ensure the continued receipt of federal funds by K-12 school districts and community colleges, and to revise generally and update the law relating to pupil and student records.[2] In this context the Legislature has added and amended various code sections within the statutory schemes governing K-12 school district and community college district management of pupil and student records. As a result, although FERPA and other federal laws parallel California laws regarding certain aspects of pupil and student record management, California law goes beyond federal law in other aspects.

Federal Law:

***The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)*:**

As further discussed below, the Chancellor's Office asserts that the some of the activities required by the test claim statutes are federally mandated by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) (20 U.S.C. § 1092 (f),

[2] See Education Code sections 49060 and 76200 for legislative intent.

34 C.F.R. § 668.1 et seq., as amended by Pub.L. No. 105-244). The Clery Act addresses the dissemination of crime statistics and the notification of victim rights to the campus community. The Clery Act, originally enacted as the Crime Awareness and Campus Security Act of 1990,[3] conditions participation in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965 (HEA) and/or any program under part C of subchapter I of chapter 34 of Title 42 (Federal Work Study programs (42 U.S.C. § 2751 et seq.) on compliance with the provisions of the Clery Act.

The Clery Act was enacted amid concerns that the proliferation of campus crime created a growing threat to students, faculty, and school employees.[4] Congress recognized that contemporary campus communities had become increasingly dangerous places and noted that in roughly eighty percent of campus crimes the perpetrator and the victim were both students.[5] These factors led Congress to find, among other things that, "students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or report occurrences of crime."[6] In addition, Congress established the requirement that all participating institutions "make timely reports to the campus community on crimes considered to be a threat to other students and employees … that are reported to campus security or local law police agencies."[7] The reports are to be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

In 1992, Congress sought to provide victims of sexual assault on campus certain basic rights. Congress added to the Clery Act the requirement that participating institutions develop and distribute a policy statement concerning their campus sexual assault programs targeting the prevention of sex offenses. The policy must address the procedures to be followed if a sex offense occurs. In addition, the policy must contain a statement that the alleged victim of sexual assault must be notified of any disciplinary action taken against the alleged assailant.

The Family Educational Rights and Privacy Act of 1974 (FERPA):

In 1974, Congress enacted the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g, 34 C.F.R. § 99.1 et seq.). FERPA was enacted to protect parents and students' right to access the student's records[8] and "to protect [parents' and students'] rights to privacy by limiting the transferability of their records without their consent."[9] FERPA

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[3] Title II of the Student Right to Know and Campus Security Act (Pub.L. No. 101-542 (Nov. 8, 1990) 104 Stat. 2381) amending 20 U.S.C. sections 1092, 1094, and 1232g.

[4] *Havlik v. Johnson & Wales University* (1st Cir. 2007) 509 F.3d 25, 30, citing to H.R.Rep. No. 101-518, p. 7 (1990) and Pub.L. No. 101-542, section 202, 104 Stat. 2381.

[5] *Ibid.*

[6] Section 202 of Pub.L. 101-542.

[7] Title 20 United States Code section 1092 (f)(3).

[8] Title 20 United States Code section 1232g (a)(1)(A). See 20 United States Code section 1232g (d) for applicability of FERPA's provisions to students that have attained eighteen years of age or that are attending institutions of postsecondary education.

[9] *United States v. Miami University* (6th Cir. 2002) 294 F.3d 797, 806.

conditions federal funds to an educational agency or institution on the agency or institution's compliance with the provisions of FERPA and its implementing regulations.[10]

FERPA's provisions generally prohibit the release of a student's educational records without adherence to specified procedural safeguards for the privacy rights of parents and students. These procedural safeguards include the provision of notice to parents or students regarding the release of specified information, and the need for consent in order to release specified information or records. FERPA's provisions also provide exceptions in which educational institutions or agencies may release a student's educational record without the consent of a parent or student. However, some of these exceptions set forth additional safeguards for the privacy rights of parents and students.

Claimants' Position

The claimants, Riverside Unified School District and the Palomar Community College District, contend that the test claim statutes constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.

The claimants assert that prior to January 1, 1975, there were no statutes, code sections or regulations which required school districts to search and retrieve, furnish or forward student records.[11] In addition, the claimants argue that meeting the new requirements of the test claim statutes require increased costs for K-12 school districts and community college districts to implement the following activities:

> I. SCHOOL DISTRICTS
>
> A) To establish and implement policies and procedures, and periodically update those policies and procedures as required for the searching, retrieving and furnishing of student records pursuant to Chapter 6.5 of Part 27, Division 4, Title 1 of the Education Code.
>
> B) Pursuant to Education Code Section 49062, establishing, maintaining and destroying pupil records, including health records, according to regulations adopted by the State Board of Education.
>
> C) Pursuant to Education Code Section 49065, the furnishing of (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils, and (3) for searching and retrieving pupil records when transcripts or verifications are requested.
>
> D) Pursuant to Education Code Section 49067, subdivision (a), conferencing with, or providing a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. Pursuant to subdivision (b), adopting and implementing regulations, when assigning a failing grade based upon excess absences, which include, but not be limited to, the following:

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[10] Title 20 United States Code section 1232g; 34 Code of Federal Regulations part 99.1 (Nov. 15, 2007).

[11] Exhibit A, Test claim 02-TC-34, p. 2.

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

E) Pursuant to Education Code Section 49068, whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, transferring the pupil's permanent record or a copy thereof upon receipt of a request from the district or private school where the pupil intends to enroll. For any school district requesting such a transfer of a record, notifying the parent of his or her right to receive a copy of the record and a right to a hearing to challenge the content of the record.

F) Pursuant to Education Code Section 44069.3, allowing access to records of grades and transcripts, and any individualized education plans (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 maintained by school districts of those pupils to Foster family agencies with jurisdiction over currently enrolled or former pupils.

G) Pursuant to Education Code Section 49069.5, subdivision (b), cooperating with the county social service or probation department, a regional center for the developmentally disabled, or other placing agency to ensure that the education record of a pupil in foster care is transferred to the receiving local education agency in an expedited manner upon the request of those agencies. Pursuant to subdivision (d), the information provided shall include, but not be limited to, the following: (1) The location of the pupil's records, (2) the last school and teacher of the pupil, (3) the pupil's current grade level, and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal taw.

H) Pursuant to Education Code Section 49076.5, releasing information specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

I) Pursuant to Education Code Section 49077, making a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

J) Pursuant to Education Code Section 49078, upon service of a lawfully issued subpoena or a court order solely for the purpose of producing records of a pupil, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office.

II. COMMUNITY COLLEGES

K) To establish and implement policies and procedures, and periodically update those policies and procedures, for the searching, retrieving and furnishing student records pursuant to Chapter 1.5 of Part 47, Division 7 of Title 3 of the Education Code.

L) Pursuant to Education Code Section 76220, establishing, maintaining, and destroying student records according to regulations adopted by the Board of Governors of the California Community Colleges.

M) Pursuant to Education Code Section 76223, providing, free of charge, (1) up to two transcripts of students' records or (2) up to two verifications of various records of students; and for searching or retrieving any student records when transcripts or verifications are required.

N) Pursuant to Education Code Section 76225, whenever a student transfers from one community college to another, or to a public or private institution of postsecondary education within the state, transferring appropriate records or copies and notifying the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record.

O) Pursuant to Education Code Section 76234, whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, or any conduct that threatens the health and safety of the alleged victim, informing the alleged victim of the results of any disciplinary action by the community college and the results of any appeal.

P) Pursuant to Education Code Section 76244, making a reasonable effort to notify a student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

Q) Pursuant to Education Code Section 76245, upon service of a lawfully issued subpoena or a court order solely to produce a school record regarding any student, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of

that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office.

R) Pursuant to Education Code Section 76246, complying with appropriate rules and regulations adopted by the Board of Governors of the California Community Colleges to insure the orderly implementation of this chapter.[12]

The claimants filed comments, dated October 10, 2003, and April 23, 2004, in rebuttal to Finance's and the Chancellor's Office comments set forth immediately below. Co-claimant, Riverside Unified School District, filed comments dated April 13, 2009, in response to the draft staff analysis. The claimants' arguments in response to comments by Finance and the Chancellor's Office and to the draft staff analysis will be addressed as necessary in the discussion below.

Department of Finance's Position (Finance)

In comments submitted on September 15, 2003, Finance asserts that several of the activities for which state reimbursement is sought by the claimants were already required by the state and/or federal law in 1974 or before. This is contrary to the claimants' assertion that "prior to 1975, there were no statutes, code sections or regulations which required school districts to search and retrieve, furnish or forward student records."[13] Finance contends that the claimants did not include "a written narrative that includes a detailed description of the activities required under prior law or executive order," as required by Title 2, Code of Regulations, Section 1183, subdivision (d)(3)(A). Thus, Finance questions the completeness of the test claim and requested that the Commission direct the claimants to accurately provide the information required by the regulations.[14]

California Community Colleges-Chancellor's Office Position (Chancellor's Office)

The Chancellor's Office, regarding the portion of the test claim applicable to community colleges (Ed. Code, §§ 76220, 76223, 76225, 76234, 76244, 76245, and 76246), asserts that the entire test claim should be denied. The Chancellor's Office argues that a substantial part of the test claim should be denied, as most of the provisions of the test claim statutes were enacted by Senate Bill No. (SB) 182, an act designed to bring California law into conformity with FERPA. The Chancellor's Office also argues that specific test claim statutes: (1) do not require any activities either pursuant to their plain language or because the activity is the result of an underlying discretionary activity; and (2) do not constitute new programs or higher levels of service as the activities were required by prior state and/or federal law.

The Chancellor's Office comments will be addressed as necessary in the discussion below.

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[12] Exhibit A, Test claim 02-TC-34, p. 27-32.

[13] Exhibit C, Finance Comments on 02-TC-34, dated September 15, 2003, p. 1, referencing test claim 02-TC-34, page 2.

[14] Test claim 02-TC-34 was deemed complete on July 8, 2003, and all claimants and interested parties were noticed. Issues of law raised by claimants and interested parties will be considered in the analysis, as necessary.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[15] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[16] "It's purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[17] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or requires a local agency or school district to engage in an activity or task.[18] The required activity or task must be new, constituting a "new program", or it must create a "higher level of service" over the previously required level of service under existing programs.[19]

The courts have defined a "program" that is subject to article XIII B, section 6 of the California Constitution ("hereinafter "article XIII B, section 6"), as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[20] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[21] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public"[22]. Finally, the newly required activity or higher level of service must impose costs on

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[15] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[16] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 735.

[17] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[18] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[19] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[20] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, supra, 44 Cal.3d 830, 835).

[21] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar*, supra, 44 Cal.3d 830, 835.

[22] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

local agencies as a result of local agencies' performance of the new activities or higher level of service that were mandated by the state statute or executive order.[23]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[24] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[25]

Issue 1: Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?

In its March 16, 2004 comments to the test claim, the Chancellor's Office asserts that much of the test claim should be denied as federally-mandated. The Chancellor's Office argues that many of the test claim statutes are necessary to implement the Clery Act and FERPA, and thus, do not constitute state-mandated activities. In addition to the federal mandate issue raised by the Chancellor's Office, some of the activities required by the test claim statutes raise court mandate issues, and therefore, may not be subject to article XIII B, section 6 of the California Constitution.

Article XIII B places spending limits on both the state and local governments, however, costs mandated by courts or federal law are expressly excluded from these spending limits. Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any "[a]ppropriations required to complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly."

Regarding federal mandates, Government Code section 17556, subdivision (c), provides that the Commission shall not find costs mandated by the state if the test claim statute imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. In addition, when analyzing federal law in the context of a test claim under article XIII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations" under article XIII B.[26]

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[23] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[24] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[25] *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[26] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; see also, Government Code section 17513.

However, when federal law imposes a mandate on the state, and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[27]

As will be further discussed below, the federal mandate issues and court mandate issues arise in regard to Education Code sections 49068, 49077, 76225, 76244, and 76234. Education Code sections 49068 and 76225 address the transfer of a pupil's permanent record and a student's appropriate records between schools and institutions of higher education and the rights of parents/student when a transfer occurs. Education Code sections 49077 and 76244 address the provision of pupil/student information in compliance with a court order or subpoena and the rights of parents/student prior to a districts compliance with the court order or subpoena. Education Code section 76234 addresses the notification of an alleged victim of sexual assault or physical abuse of any disciplinary action by the community college taken against any student for the alleged sexual assault or physical abuse and the results of any appeal.

The remaining test claim statutes address other areas of pupil and student record management including the establishment, maintenance, and destruction of records; charges for copies of transcripts; and regulations regarding evaluation of achievement. These test claim statutes address issues that exceed the scope of federal law or any court mandate, and therefore, are subject to article XIII B, section 6 of the California Constitution.

The following discussion will first analyze whether the provisions of the Clery Act and/or FERPA constitute federal mandates on K-12 school districts and community colleges. Then the discussion will analyze whether the activities required by Education Code sections 49068, 49077, 76225, and 76244 are federally-mandated. Finally, the discussion will analyze whether the provisions of Education Code sections 49077 and 76244 constitute a court mandate.

A. Do the provisions of the Clery Act and FERPA constitute federal mandates on K-12 school districts and/or community college districts?

The Clery Act:

The Chancellor's Office argues that any requirement of Education Code section 76234 is federally mandated under the Clery Act. Education Code section 76234 provides:

> Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assault or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. [¶] ... [¶].

The Clery Act was originally enacted as the "Crime Awareness and Campus Security Act of 1990" addressing the disclosure of campus security policies and campus crime statistics for

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[27] *Hayes, supra*, 11 Cal.App.4th at p. 1594.

postsecondary educational institutions.[28] The Crime Awareness and Campus Security Act of 1990 was enacted amid concerns that the proliferation of campus crime created a growing threat to students, faculty, and school employees.[29] Congress recognized that contemporary campus communities had become increasingly dangerous places and noted that in roughly eighty percent of campus crimes the perpetrator and the victim were both students.[30] These factors led Congress to find, among other things that, "students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or report occurrences of crime."[31]

The Crime Awareness and Campus Security Act of 1990 conditioned participation in any Title IV student financial assistance program and Federal Work-Study programs upon compliance with its provisions. These provisions require participating institutions to disclose crime statistics for the most recent three years, as well as disclose the institution's security policies.[32] In addition, the Crime Awareness and Campus Security Act of 1990 established the requirement that all participating institutions make timely reports to the campus community on crimes considered to be a threat to other students and employees that are reported to campus security or local police agencies. The reports are to be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.[33]

The Crime Awareness and Campus Security Act of 1990 also amended FERPA, specifically 20 U.S.C. section 1232g (b), by providing that FERPA, "shall not be construed to prohibit an institution of postsecondary education from disclosing to an alleged victim of any crime of violence ... the results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime with respect to such crime."[34] Therefore, a postsecondary educational institution could disclose the results of a disciplinary proceeding regarding a crime of violence, including sexual assault, to the alleged victim of the crime without being in violation of FERPA's provisions.

In 1992, Congress amended the Crime Awareness and Campus Security Act of 1990 by enacting the Campus Sexual Assault Victim's Bill of Rights as part of the Higher Education Amendments of 1992 (Pub. L. No. 102-325, § 486 (c); see also 20 U.S.C. § 1092(f)). The Campus Sexual Assault Victim's Bill of Rights provides victims of sexual assault on campus certain basic rights

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[28] Title II of the Student Right to Know and Campus Security Act (Pub.L. No. 101-542) (Nov. 8, 1990) (104 Stat. 2381) amending 20 U.S.C. sections 1092, 1094, and 1232g.

[29] *Havlik v. Johnson & Wales University* (1st Cir. 2007) 509 F.3d 25, 30, citing to H.R.Rep. No. 101-518, p. 7 (1990) and Pub.L. No. 101-542, section 202, 104 Stat. 2381.

[30] *Ibid.*

[31] Section 202 of Public Law 101-542.

[32] Title 20 United States Code section 1092 (f), as amended by section 204 of Pub.L. No. 101-542.

[33] Title 20 United States Code section 1092 (f)(3), as amended by section 204 of Pub.L. No. 101-542.

[34] Title 20 United States Code section 1232g (b), as amended by section 203 of Pub.L. No. 101-542.

and requires participating institutions to develop and distribute a policy statement concerning their campus sexual assault programs targeting the prevention of sex offenses.[35] The policy must address the procedures to be followed if a sex offense occurs. As relevant to this test claim, the policy is required to address:

> ... Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that--
>
> [¶] ... [¶]
>
> ... both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.[36]

In 1998, the Crime Awareness and Campus Security Act of 1990 was amended and renamed the Clery Act. The activity stated immediately above remained substantively the same.

Thus, under the Clery Act participating community college districts are required to perform the following activity:

> Inform both the accuser and the accused of the outcome of any campus disciplinary proceeding brought alleging a sexual assault. (20 U.S.C. § 1092(f)(8)(B)(iv)(II).)

This requirement is imposed directly upon each eligible institution, including community college districts, participating in any student financial assistance program authorized by Title IV of the HEA and/or Federal Work-Study Programs.[37] Therefore, the provisions of the Clery Act are applicable to community colleges and directly imposed on community colleges as eligible institutions participating in student financial assistance programs authorized by Title IV.

However, the provisions of the Clery Act are conditions for the participation in Title IV student financial assistance programs and Federal Work Study programs. Community college districts are not obligated to accept the conditions, and thus, community college districts are not *legally* compelled to comply with the provisions of the Clery Act. As a result, it is necessary to determine whether community college districts are *practically* compelled to comply with the provisions of the Clery Act. The court in *Hayes v. Commission on State Mandates* discussed this type of "cooperative federalism" scheme employed by FERPA noting that:

> [T]he vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. ... However, "certain regulatory standards imposed by the federal government under 'cooperative

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[35] Title 20 United States Code section 1092 (f), as amended by section 486 of Pub.L. No. 102-325.

[36] Title 20 United States Code section 1092 (f)(7)(B)(iv)(II), as amended by section 486 of Pub.L. No. 102-325 (currently 20 U.S.C. § 1092 (f)(8)(B)(iv)(II)).

[37] All California Community Colleges existing during the 2001-2002 fiscal year participated in the Federal Pell Grant Program and the Federal Supplemental Educational Opportunity Grant Program, see attached Student Financial Aid Awards report from the Chancellor's Office Data Mart. For a list of Title IV student financial assistance programs, see title 34 of the Code of Federal Regulations part 668.1.

federalism' schemes are coercive on the states and localities in every practical sense." [38]

The court went on to say that "[t]he test for determining whether there is a federal mandate is whether compliance with federal standards 'is a matter of true choice.'"[39] To make this determination the court set out various factors, including: (1) the nature and purpose of the federal program, (2) whether its design suggests an intent to coerce, and (3) any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.[40]

The nature and purpose of the Clery Act is to provide protection to the campus community against specified criminal offenses and to provide rights to victims of sexual offenses by requiring the provision of crime statistics, timely notification of the occurrence of crimes considered a threat to students and employees, notification of campus sexual assault programs and the procedures followed once a sex offense has occurred. This purpose was reiterated in 1996 when Congress, displeased with the Department of Education's efforts to enforce the Clery Act, passed a resolution calling for the Department of Education to make "'[s]afety of students ... the number one priority.'"[41]

Although the nature and purpose of the Clery Act is significant, the intent to coerce participation, however, does not appear to be. The Chancellor's Office asserts that the provisions of the Clery Act applies to "each institution receiving federal financial assistance (which includes all community college districts) ... ."[42] However, as discussed above, the language of the Clery Act limits its application to institutions participating in Title IV student financial assistance programs and/or Federal Work Study programs, not on *all* federal financial assistance. In addition, the Clery Act does not impose any penalties or create any private cause of action against an institution that chooses not to participate in Title IV student financial assistance programs or Federal Work Study programs. Unlike in *City of Sacramento*, community colleges do not face certain and severe penalties such as full and double taxation.[43] Nor do community colleges face a "barrage of litigation with no real defense" as in *Hayes*.[44] In fact, even if a community college does participate in Title IV student financial assistance programs or Federal Work Study programs, the Clery Act specifically provides that it does not "create a cause of action against any institution of higher education or any employee of such institution for any civil liability; ... or establish any standard of care."[45] Rather, the Secretary of Education is given sole authority to enforce the Clery Act and may limit, suspend, or terminate an institution's participation or

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[38] *Hayes*, *supra*, 11 Cal.App.4th at p. 1581-1582, citing to *City of Sacramento*, *supra*, 50 Cal.3d at p. 73-74.

[39] *Ibid.*

[40] *Ibid.*

[41] *Havlik*, *supra*, 509 F.3d at p.31, citing to H.R.Rep. No. 104-875, p. 61 (1996).

[42] Chancellor's Office Comments on 02-TC-34, dated March 16, 2004, p. 5.

[43] *City of Sacramento*, *supra*, 50 Cal.3d at p. 74.

[44] *Hayes*, *supra*, 11 Cal.App.4th at p. 1592.

[45] Title 20 United States Code section 1092 (f)(14).

impose a civil penalty upon a participating institution, however, as stated these sanctions only apply to *participating* institutions.

In regard to practical consequences, an institution's noncompliance with the Clery Act could result in increased hurdles for students that utilize Title IV student financial assistance programs and/or Federal Work Study programs to assist in the costs of attending community college. However, there is no evidence in the record regarding the extent that community college students as a whole rely on Title IV student financial assistance programs and/or Federal Work Study programs to attend community colleges.

In sum, although the purpose of the Clery Act is very significant, in light of the lack of intent to coerce participation, and the lack of any certain and severe penalties for failing to comply with the Clery Act outside of forgoing participation in Title IV student financial assistance programs and Federal Work Study programs, staff finds that the provisions of the Clery Act (20 U.S.C. § 1092 (f)) do not constitute federal mandates upon community college districts. Thus, the provisions of Education Code section 76234 are not federally-mandated by the Clery Act. The remaining issues regarding whether Education Code section 76234 mandates a new program or higher level of service under article XIII B, section 6, are discussed on page 53.

FERPA:

As noted above, FERPA was enacted to protect parents and students' right to access the student's records[46] and "to protect [parents' and students'] rights to privacy by limiting the transferability of their records without their consent."[47] FERPA conditions federal funds to an educational agency or institution on the agency or institution's compliance with the provisions of FERPA and its implementing regulations.[48]

As relevant to this test claim, FERPA provides that an educational agency or institution may transfer the education record of a student, without the written consent of the student or student's parents, to:

> officials of other schools or school systems in which the student seeks or intends to enroll, *upon condition* that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record.[49] (Italics added.)

FERPA further provides:

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records

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[46] Title 20 United States Code section 1232g (a)(1)(A). See 20 United States Code section 1232g (d) for applicability of FERPA's provisions to students that have attained eighteen years of age or that are attending institutions of postsecondary education.

[47] *United States v. Miami University* (6th Cir. 2002) 294 F.3d 797, 806.

[48] Title 20 United States Code section 1232g; 34 Code of Federal Regulations part 99.1 (Nov. 15, 2007).

[49] Title 20 United States Code section 1232g (b)(1)(B).

other than directory information, or as is permitted under paragraph (1) of this subsection, unless--

[¶] ... [¶]

... such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.[50]

FERPA's implementing regulations further explain that an educational agency may disclose personally identifiable information from an education record of a student if the disclosure is to comply with a judicial order or lawfully issued subpoena and "... only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance ... ."[51]

In regard to students eighteen years of age or attending an institution of postsecondary education FERPA provides:

... [W]henever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

Thus, any notification or right given to parents of pupils in K-12 schools under FERPA is also accorded to students in community college. In addition, FERPA provides that educational agencies or institutions must:

... effectively [inform] the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by [20 U.S.C. section 1232g].[52]

Therefore, under FERPA K-12 school districts and community college districts are required to perform the following activities:

1. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the transfer of the student's education records, provide a copy of the education records if desired by the parents, and give the parents an opportunity for a hearing to challenge the content of the record. (20 U.S.C. § 1232g (b)(1)(B).)
2. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of a lawfully issued subpoena or court order seeking "personally identifiable information" in advance of compliance with the lawfully issued subpoena or court order. (20 U.S.C. § 1232g (b)(2)(B).)

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[50] Title 20 United States Code section 1232g (b)(2)(B).

[51] 34 C.F.R. section 99.31, subdivision (a)(9).

[52] Title 20 United States Code section 1232g (e).

3. Inform the parent of a student or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the rights accorded them by FERPA (20 U.S.C. § 1232g). (20 U.S.C. § 1232g (e).)

These requirements are imposed directly upon "educational agencies and institutions" in receipt of any federal funds, including K-12 school districts and community college districts.[53]

However, because the requirements of FERPA and its implementing regulations are conditions for the receipt of federal funds, K-12 school districts and community college districts are not obligated to accept the conditions, and may choose to not receive federal funds and thus avoid the conditions imposed by FERPA. Thus, K-12 school districts and community college districts are not *legally* compelled to comply with the provisions of FERPA, and therefore, it is necessary to determine whether K-12 school districts and community college districts are *practically* compelled to comply with the provisions of FERPA.

The court in *Hayes v. Commission on State Mandates* discussed this type of "cooperative federalism" scheme employed by FERPA noting that:

> [T]he vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. ... However, "certain regulatory standards imposed by the federal government under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense." [54]

The court went on to say that "[t]he test for determining whether there is a federal mandate is whether compliance with federal standards 'is a matter of true choice.'"[55] To make this determination the court set out various factors, including: (1) the nature and purpose of the federal program, (2) whether its design suggests an intent to coerce, and (3) when state and/or local participation began.[56]

Here, as noted above, the nature and purpose of FERPA is to "protect [parents' and students'] rights to privacy by limiting the transferability of their records without their consent."[57] Congress' high regard for the privacy rights of students was noted by the court in *United States v. Miami University* (6th Cir. 2002) 294 F.3d 797. Citing to 20 U.S.C. section 1232i, the court stated:

> Because Congress holds student privacy interests in such high regard:
>
> > the refusal of a[n] ... educational agency or institution ... to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the

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[53] See *Hayes, supra*, 11 Cal.App.4th at p. 1584.

[54] *Hayes, supra*, 11 Cal.App.4th at p. 1581-1582, citing to *City of Sacramento, supra*, 50 Cal.3d at p. 73-74.

[55] *Ibid.*

[56] *Ibid.*

[57] *United States v. Miami University, supra*, 294 F.3d at p. 806.

> grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance.
>
> In other words, Congress places the privacy interests of students and parents above the federal government's interest in obtaining necessary data and records.[58]

With regard to whether the design of the federal program suggests an intent to coerce, as noted above, the receipt of all federal funds by K-12 school districts and community college districts is conditioned on compliance with the provisions of FERPA and its implementing regulations. Failure to comply with the provisions of FERPA and its implementing regulations would jeopardize funds which have been made available under programs administered by the Secretary of State. As noted by the court in *Hayes v. Commission on State Mandates*, federal funding to education is pervasive.[59] Failure to comply with the provisions of FERPA would result in a loss of all federal funding received by K-12 school districts and community college districts.

In addition, K-12 school districts and community college districts have complied with FERPA and received federal funds for a significant period of time. Education Code sections 49060 and 76200 set forth the legislative intent of Education Code sections 49060 – 49085 and 76200 - 76246. As enacted in 1976, Education Code section 49060 provided in relevant part:

> It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 [FERPA] regarding parental access to, and the confidentiality of, pupil records in order to insure the *continuance of federal education funds* to public educational institutions within the state ... .[60] (Italics added.)

Education Code section 76200 substantively mirrors the language of Education Code section 49060 quoted above. The language of sections 49060 and 76200, as enacted in 1976, was made operative on April 30, 1977. Thus, receipt of federal funds by K-12 school districts and community college districts has been conditioned upon compliance with the provisions of FERPA since at least 1977. In addition, the language of section 49060 and 76200 indicates the reliance on federal funds conditioned on compliance with the provisions of FERPA for at least 30 years.

In sum, because of the purpose of FERPA to protect the privacy rights of parents and students and Congress' high regard for these rights, and the loss of all federal funds by K-12 school districts and community college districts, and the extent to which these funds are relied upon, staff finds that the following provisions of FERPA (20 U.S.C. § 1232g) and its implementing regulations (34 C.F.R. § 99.1 et seq.) constitute federal mandates on K-12 school districts and community college districts:

1. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the transfer of the student's education records, provide a copy of the education records if desired by the parents, and

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[58] *Id* at 807.

[59] *Hayes v. Commission on State Mandates*, supra, 11 Cal.App.4th 1564, 1584.

[60] Education Code section 49060 (Stats. 1976, ch. 1010).

give the parents an opportunity for a hearing to challenge the content of the record. (20 U.S.C. § 1232g (b)(1)(B).)

2. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of a lawfully issued subpoena or court order seeking "personally identifiable information" in advance of compliance with the lawfully issued subpoena or court order. (20 U.S.C. § 1232g (b)(2)(B).)

3. Inform the parent of a student or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the rights accorded them by FERPA (20 U.S.C. § 1232g). (20 U.S.C. § 1232g (e).)

To the extent that these same activities are mandated by a test claim statute, they are not subject to article XIII B, section 6 of the California Constitution.[61]

Do the requirements of the test claim statutes exceed the federal mandates of FERPA?

Government Code section 17556, subdivision (c), provides that the Commission shall not find costs mandated by the state if the test claim statute imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. In addition, the court in *Hayes v. Commission on State Mandates* held that when the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[62] Thus, it is necessary to determine whether the mandates of the test claim statutes exceed the federal mandates of FERPA.

Transfer of Education Records Between Schools (Ed. Code, §§ 49068 and 76225):

Education Code sections 49068 and 76225 address the transfer of a pupil's permanent record and a student's appropriate records between schools and institutions of higher education. Section 49068 provides in relevant part:

> Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. . . . .

The language of section 76225 substantively mirrors the language of Education Code section 49068 as made applicable to community college districts. Except that section 76225 provides that "appropriate records" shall be transferred upon a request from the student.

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[61] *Hayes, supra*, 11 Cal.App.4th at p. 1581.

[62] *Hayes, supra*, 11 Cal.App.4th at p. 1594.

The plain language of Education Code sections 49068 and 76225 require K-12 school districts and community colleges to perform the following activities:

1. Transfer a pupil's permanent record, or a copy of the permanent record, to the K-12 school district or private school where the pupil intends to enroll upon the request of the K-12 school district or private school where a pupil intends to transfer. (Ed. Code, § 49068.)
2. Transfer appropriate records or a copy thereof to a community college or public or private institution of postsecondary education within California that a student intends to transfer to upon request from the student. (Ed. Code, § 76225.)
3. Notify a parent of his or her right to receive a copy of the pupil's permanent record and the right to a hearing to challenge the content of the pupil's permanent record when the K-12 school district requests the transfer of a pupil's permanent record from the pupil's former K-12 school district or private school. (Ed. Code, § 49068.)
4. Notify a student of his or her right to receive a copy of his/her appropriate record and his or her right to a hearing to challenge the content of the record when he or she transfers to another community college or public or private institution of postsecondary education and requests the transfer of the record. (Ed. Code, § 76225.)

As discussed above, the provisions of FERPA require K-12 school districts and community college districts to:

1. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the transfer of a student's education records, provide a copy of the education records if desired by the parents, and give the parents an opportunity for a hearing to challenge the content of the record. (20 U.S.C. § 1232g (b)(1)(B).)
2. Inform the parent of a student or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the rights accorded them by FERPA (20 U.S.C. § 1232g). (20 U.S.C. § 1232g (e).)

As shown by the above requirements, FERPA (specifically 20 U.S.C. § 1232g (b)(1)(B) and (e)) requires the notification of parents/students of the transfer of a student's "*education record*" and the parents'/student's right to a copy of the "*education record*" or to contest the content of the "*education record.*" While Education Code section 49068 requires notification of a parent upon the transfer of a pupil's "*permanent record*" and Education Code section 76225 requires the notification of a student upon the transfer of his/her "*appropriate record.*" In order to determine whether the requirements of Education Code sections 49068 and 76225 exceed those of FERPA, it must be determined whether "permanent record" and "appropriate record" is greater in scope than "education record."

Title 20 United States Code section 1232g (a)(4)) defines the term "education records" as used in FERPA. Section 1232g (a)(4) broadly defines "education records" as records, files, documents, and other materials which contain information directly related to a student, and are maintained by an educational agency or institution or by a person acting for such agency or institution.

Section 1232g (a)(4) further provides that "education records" does not include:

> (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;
>
> (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;
>
> (iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
>
> (iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

The scope of the terms "permanent record" and "appropriate records" are undefined in the governing statutes. In order to determine the meaning of these terms, it is necessary to read these terms in the context of the whole statutory scheme and not as individual parts or words standing alone.[63] The Legislature, through the enactment of Education Code sections 49062 and 76220, place the authority to define what pupil and student records are to be established with the Board of Education and the Board of Governors.[64] In addition to defining "mandatory permanent pupil records," the Board of Education sets forth definitions for "mandatory interim pupil records," and "permitted pupil records."[65] The Board of Education's regulations then delineate what information each record shall include.[66]

The Board of Education's regulations provide that "mandatory permanent pupil records" include:

> (A) Legal name of pupil.
>
> (B) Date of birth.

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[63] *Fontana Unified School Dist., supra,* 45 Cal.3d at p. 218.

[64] Education Code sections 49062 and 76220 are further discussed below.

[65] California Code of Regulations, title 5, section 432, subdivision (b)(2)(B), Register 77, No. 39 (Sept. 23, 1977).

[66] *Ibid.*

(C) Method of verification of birth date.

(D) Sex of pupil.

(E) Place of birth.

(F) Name and address of parent of minor pupil.

1. Address of minor pupil if different than the above.

2. An annual verification of the name and address of the parent and the residence of the pupil.

(G) Entering and leaving date of each school year and for any summer session or other extra session.

(H) Subjects taken during each year, half-year, summer session, or quarter.

(I) If marks or credit are given, the mark or number of credits toward graduation allows for work taken.

(J) Verification of or exemption from required immunizations.

(K) Date of high school graduation or equivalent.

All of the above examples of "permanent records" constitute "education records" as defined by FERPA, and do not fall within any of the exceptions to the definition of "education records" as set forth by FERPA. Thus, staff finds that "permanent record" as used in Education Code section 49062 does not exceed the scope of FERPA's definition of "education records."

The term "appropriate records," as used in Education Code section 76225, must be viewed in the context of the whole of Education Code section 76225, because the Board of Governors' regulations do not define "appropriate records." "Appropriate records" is used in section 76225 within the context of a student transferring from one community college or public or private institution of postsecondary education to another within the state. It follows that "appropriate records" is limited to those education records appropriate for the transfer of a student. Thus, the term "education records" as used in FERPA is inclusive of "appropriate records" as used in Education Code section 76225.

As a result, staff finds that the following activities required by Education Code sections 49068 and 76225 do not exceed the provisions of FERPA, and therefore, are not subject to article XIII B, section 6 of the California Constitution:

1. Notify a parent of his or her right to receive a copy of the pupil's permanent record and the right to a hearing to challenge the content of the pupil's permanent record when the K-12 school district requests the transfer of a pupil's permanent record from the pupil's former K-12 school district or private school. (Ed. Code, § 49068.)

2. Notify a student of his or her right to receive a copy of his/her appropriate record and his or her right to a hearing to challenge the content of the record when he or she transfers to another community college or public or private institution of postsecondary education and requests the transfer of the record. (Ed. Code, § 76225.)

However, the following activities required by Education Code sections 49068 and 76225 exceed the provisions of FERPA, and are therefore, subject to article XIII B, section 6 of the California Constitution:

1. Transfer a pupil's permanent record, or a copy of the permanent record, to the K-12 school district or private school where the pupil intends to enroll upon the request of the K-12 school district or private school where a pupil intends to transfer. (Ed. Code, § 49068.)
2. Transfer appropriate records or a copy thereof to a community college or public or private institution of postsecondary education within California that a student intends to transfer to upon request from the student. (Ed. Code, § 76225.)

In Riverside Unified School District's comments to the draft staff analysis, Riverside Unified School District argues:

> The DSA ... concludes, the following activities required by Education Code section 49068 exceed the provisions of FERPA, and are therefore, subject to Article XIII B, section 6 of the California Constitution.
>
> > Transfer a pupil's permanent record or a copy of the permanent record to the K-12 district or private school where the pupil intends to enroll upon the request of the K-12 district or private school where a pupil intends to transfer.
>
> The above activity is not included as one of the specific new activities in the conclusion of the DSA ... . It is well established in case law and previous Commission decisions, activities required by the Education Code are reimbursable state mandates when the activities exceed the requirements of federal law and meet the other requirements of a state reimbursable mandate.[67]

The claimant is correct that the draft staff analysis found that section 49068 is *subject* to article XIII B, section 6 of the California Constitution, however, without restating the analysis below on pages 38-41, in order to constitute a reimbursable state-mandated activity it is not enough that the provisions of a test claim statute require activities beyond those required by federal law. Established case law requires that that the provisions of the test claim statute constitute a new program or higher level of service in order to constitute a reimbursable state mandate under article XIII B, section 6 of the California Constitution.[68] As discussed in the analysis below on pages 38-41, the above activity does not constitute a "new program or higher level of service." Therefore, the above activity does not "meet the other requirements of a state reimbursable mandate," and as a result is not included as a new activity that constitutes a reimbursable state-mandated program in the conclusion of this analysis.

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[67] Exhibit I, Riverside Unified School District Comments to Draft Staff Analysis, dated April 13, 2009, p. 1-2.

[68] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar*, supra, 44 Cal.3d 830, 835.

Provision of Student Information in Compliance with a Court Order or Subpoena (Ed. Code, §§ 49077 and 76244):

Education Code sections 49077 and 76244 address the provision of pupil/student information in compliance with a court order or subpoena. Specifically, section 49077 provides:

> Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The school district shall make a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

The language of section 76244 substantively mirrors the language of Education Code section 49077 as made applicable to community college districts. The plain language of Education Code sections 49077 and 76244 require K-12 school districts and community college districts to perform the following activities:

1. Furnish information concerning a pupil in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 49077.)
2. Furnish information concerning a student in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 76244.)
3. Make reasonable effort to notify the parent or legal guardian and the pupil of the lawfully issued subpoena or court order, if lawfully possible within the requirements of the court order, in advance of compliance with a lawfully issued subpoena or court order. (Ed. Code, § 49077.)
4. Make reasonable effort to notify the student of the lawfully issued subpoena or court order, if lawfully possible within the requirements of the court order, in advance of compliance with a lawfully issued subpoena or court order. (Ed. Code, § 76244.)

The claimants note that the test claim does not allege furnishing information in compliance with a court order or lawfully issued subpoena.[69] However, as shown by the plain language of sections 49077 and 76244, K-12 school districts and community college districts are required to perform the above listed activities.

As discussed above, the provisions of FERPA require K-12 school districts and community college districts to:

> Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of a lawfully issued subpoena or court order seeking "personally identifiable information" in advance of compliance with the lawfully issued subpoena or court order. (20 U.S.C. § 1232g (b)(2)(B).)

However, when comparing FERPA with the requirement of Education Code section 49077 and 76244, FERPA requires the notification of parents/students of a lawfully issued subpoena or court order seeking "*personally identifiable information*" in advance of compliance, while Education Code section 49077 and 76244 require notification of parents/students of a lawfully

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[69] Exhibit F, Claimants' response to Chancellor's Office Comments on 02-TC-34, *supra*, p. 14.

issued subpoena or court order seeking "*information concerning* [*the*] *student*." In order to determine whether the requirements of Education Code sections 49077 and 76244 exceed those of FERPA (specifically 20 U.S.C. § 1232g (b)(2)(B)), it must be determined whether "information concerning a student" (as provided by Ed. Code, §§ 49077 and 76244) equates to "personally identifiable information" (as provided by FERPA). To make this determination it is necessary to read Education Code sections 49077 and 76244 in light of the statutory scheme as a whole.

Education Code section 49077 was adopted as part of article 5 of Chapter 6.5 of part 27 of division 4 of title 2 of the Education Code which addresses the privacy of pupil records. Similarly, Education Code section 76244 was adopted as part of article 1 of Chapter 1.5 of part 47 of division 7 of title 3 of the Education Code which addresses the privacy of student records. Education Code sections 49061 and 76210, which set forth the definitions of their respective chapters, provide, in relevant part, that "pupil/student record" means any item of information directly related to an identifiable pupil/student ... ." Read in the context of the statutory scheme as a whole, "information concerning a student," as referenced in Education Code sections 49077 and 76244, refers to information from a pupil/student record which consists of information directly related to an identifiable pupil/student. Based on the context of the statutory scheme as a whole, both FERPA and Education Code sections 49077 and 76244 require K-12 school districts and community college districts to notify a parent/student of a lawfully issued subpoena or court order seeking information of an identifiable pupil/student. Thus, the following activities required by Education Code sections 49077 and 76244 do not exceed the provisions of FERPA.

Staff finds that the following activities required by Education Code sections 49077 and 76244 constitute federal mandates, and therefore, are not subject to article XIII B, section 6 of the California Constitution:

1. Make reasonable effort to notify the parent or legal guardian and the pupil of the lawfully issued subpoena or court order, if lawfully possible within the requirements of the court order, in advance of compliance with a lawfully issued subpoena or court order. (Ed. Code, § 49077.)
2. Make reasonable effort to notify the student of the lawfully issued subpoena or court order, if lawfully possible within the requirements of the court order, in advance of compliance with a lawfully issued subpoena or court order. (Ed. Code, § 76244.)

However, the following activities required by Education Code sections 49077 and 76244 do exceed the provisions of FERPA:

1. Furnish information concerning a pupil in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 49077.)
2. Furnish information concerning a student in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 76244.)

These activities may be subject to article XIII B, section 6 of the California Constitution if they are not considered mandates of the court. This issue is analyzed immediately below.

B. Do the provisions of Education Code sections 49077 and 76244 constitute a court mandate?

Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates of the *courts* or the federal government which, without discretion,[70] require an expenditure for additional services or which unavoidably make the providing of existing services more costly." [Emphasis added.] Article XIII B places spending limits on both the state and local governments. Costs mandated by the courts are expressly excluded from these ceilings.[71] Since court mandates are excluded from the constitutional spending limit, reimbursement under article XIII B, section 6 is not required for costs incurred to comply with a court mandate.

Education Code sections 49077 and 76244 require K-12 school districts and community college districts to:

> Furnish information concerning a pupil/student in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 49077 and 76244.)

As shown by the language of sections 49077 and 76244, furnishing information concerning a pupil/student is triggered by either: (1) a court order, or (2) a subpoena.

The required activity of furnishing information concerning a pupil/student when triggered by a court order leaves K-12 school districts and community college districts without discretion to depart from the activity. Since the activity is required to comply with a court-ordered mandate, furnishing information concerning a pupil/student in compliance with a court order is not subject to article XIII B, section 6 because it falls within the exclusion of article XIII B, section 9, subdivision (b). As a result, staff finds that furnishing information concerning a pupil/student in compliance with a court order constitutes a court mandate, and therefore, is not subject to article XIII B, section 6 of the California Constitution.

Subpoenas are writs or orders directed to a person that require the person's attendance at a particular time and place to testify as a witness, and/or require a witness to produce any documents or things under the witness' control which the witness is bound by law to produce in evidence.[72] Failure to comply with a lawfully issued subpoena may be punished as a contempt of court and a forfeiture of $500 and all damages sustained by the aggrieved party resulting from

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[70] In *City of Sacramento v. State of California, supra,* 50 Cal. 3d 51, which interpreted section XIII B, section 9, the court held that "without discretion" as used in section 9 (b) is not the same as legal compulsion. Rather it means that the alternatives are so far beyond the realm of practical reality that they leave the state without discretion to depart from the federal standards. Thus, the court held that the state enacted the test claim statute in response to a federal mandate for purposes of article XIII B, so the state statute was not reimbursable. (*Id.* at p. 74). Although the context in *City of Sacramento* was federal mandates analyzed under article XIII B, section 9, subdivision (b), the analysis is instructive in this case.

[71] *Id.* at page 57.

[72] Code of Civil Procedure section 1985.

the person's failure to comply.[73] For these reasons, K-12 school districts and community college districts are left without discretion to comply with a lawfully issued subpoena. As distinguished from a court order, however, subpoenas may be lawfully issued by various entities and individuals, including the courts.[74] To the extent that K-12 school districts or community colleges are required to furnish information concerning a pupil/student in compliance with a lawfully issued subpoena *issued by a court*, this required activity also constitutes a court-mandate, and is not subject to article XIII B, section 6 of the California Constitution.

To the extent that K-12 school districts or community colleges are required to furnish information concerning pupils/students in compliance with lawfully issued subpoenas issued by non-court entities, such as administrative agencies, this required activity does not fall within the court-mandate exclusion and is therefore subject to article XIII B, section 6 of the California Constitution. As a result, staff finds that the following activity is required by Education Code sections 49077 and 76244 does not constitute court mandates, and therefore, is subject to article XIII B, section 6 of the California Constitution:

> Furnish information concerning a pupil/student in compliance with a lawfully issued subpoena issued by a non-court entity, such as administrative agencies. (Ed. Code, §§ 49077 and 76244.)

Issue 2: Do the test claim statutes mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution?

The following discussion will analyze whether the test claim statutes, including the non-federal/court mandate portions of Education Code sections 49068, 49077, 76225, and 76244, mandate new programs or higher levels of service on K-12 school districts and community college districts.

Education Code sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, and 76246 are all part of two larger statutory schemes (Education Code sections 49060 – 49085, and 76200 – 76246) governing K-12 school district and community college district management of pupil and student records. Because the statutory scheme governing K-12 school districts (Education Code sections 49060 – 49085) address many of the same issues as the scheme governing community college districts (Education Code sections 76200 – 76246), many of the code sections substantively mirror each other. For ease of discussion, the test claim statutes that substantively mirror each other will be discussed together.

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[73] Code of Civil Procedure sections 1991 and 1992.

[74] Courts, attorneys of record, administrative agencies, and grand juries. See Code of Civil Procedure section 1985, Government Code section 11181, and Penal Code section 939.2.

Establishment, Maintenance, and Destruction of Records (Ed. Code, §§ 49062 and 76220):

Do Education Code sections 49062 and 76220 mandate any activities?

Education Code sections 49062 and 76220 address the establishment, maintenance, and destruction of pupil records by K-12 school districts and student records by community college districts. Section 49062 provides:

> School districts shall establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. Pupil records shall include a pupil's health record. Such regulations shall establish state policy as to what items of information shall be placed into pupil records and what information is appropriate to be compiled by individual school officers or employees under the exception to pupil records provided in subdivision (b) of Section 49061. No pupil records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 49070.

The language of Education Code section 76220 substantively mirrors the language of Education Code section 49062 as made applicable to community college districts and community college students, except for the absence of the language, "Pupil records shall include a pupil's health record."

Pursuant to the plain language of sections 49062 and 76220, the establishment, maintenance, and destruction of pupil/student records must be done according to regulations adopted by the State Board of Education and the Board of Governors. Additionally, in regard to K-12 school districts pupil records are required to include a pupil's health record. Thus, sections 49062 and 76220 require K-12 school districts and community college districts act in accordance with the regulations adopted by the State Board of Education and the Board of Governors when establishing, maintaining, and destroying pupil/student records.

The claimants appear to assert that an emphasis should be placed on the "shall establish, maintain and destroy student records" portion of sections 49062 and 76220, and thus, the activities required by sections 49062 and 76220 are to establish, maintain, and destroy student records.[75] This interpretation of Education Code sections 49062 and 76220 would render the language "according to regulations adopted by the State Board of Education [or Board of Governors]" mere surplusage contrary to the rules of statutory construction.[76] Therefore, Education Code section 49062 and 76220 require K-12 school districts and community college districts to perform the following activities:

1. Establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. (Ed. Code, § 49062.)
2. Include a K-12 pupil's health record in pupil records. (Ed. Code, § 49062.)

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[75] Exhibit F, Claimants' response to Chancellor's Office Comments on 02-TC-34, dated April 23, 2004, p. 8.

[76] *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 218.

3. Establish, maintain, and destroy student records according to regulations adopted by the Board of Governors. (Ed. Code, § 76220.)

The California Supreme Court held in *Kern High School Dist.* that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[77]

As relevant to this discussion, Education Code section 49062 and 76220 require that K-12 school districts and community college districts destroy pupil/student records according to regulations adopted by the State Board of Education and the Board of Governors, respectively. The regulations adopted by the State Board of Education referenced in Education Code section 49062 are set forth in California Code of Regulations, title 5, sections 430-438 and 16020-16028. Title 5, sections 430 and 432 set forth three types of pupil records: (1) mandatory permanent pupil records; (2) mandatory interim pupil records; and (3) permitted pupil records.[78] Title 5, section 437 provides that "mandatory permanent pupil records" shall be preserved in perpetuity by all California schools, "mandatory interim pupil records" may be adjudged to be disposable when the student leaves the district or when their usefulness ceases, and "permitted pupil records" may be destroyed when their usefulness ceases. As indicated by the State Board of Education's regulations, permanent pupil records are not subject to destruction by a K-12 school district. Rather, the State Board of Education's regulations *prohibit* the destruction permanent pupil records, and therefore, are not required to be destroyed pursuant to Education Code section 49062. In addition, the destruction of interim and permitted pupil records by K-12 school districts is within the discretion of the districts but is not mandated by the state. Decisions made by a K-12 school district, rather than the state, to incur the costs of a statutory requirement do not constitute state-mandated activities.[79] Thus, the requirement of Education Code section 49062 to destroy pupil records according to regulations adopted by the State Board of Education does not constitute a state-mandated activity.

The regulations adopted by the Board of Governors referenced in Education Code section 76220 regarding the destruction of student records are set forth in California Code of Regulations, title 5, sections 59020 – 59033. Title 5, sections 59022 – 59025 set forth a procedure in which the governing board of a district classifies records as "Class-1 Permanent," "Class 2-Optional," or "Class 3-Disposable." These sections provide that specific records, including student records regarding enrollment and scholarship for each student are to be classified as "Class 1-Permanent" records. Districts may classify records "Class 2-Optional" if they are worthy of further preservation but not classified as "Class 1-Permanent." The remaining records that a district does not classify as "Class 1-Permanent" or "Class 2-Optional" are to be classified as "Class 3 – Disposable." Only records classified by the district as "Class 3 Disposable" records may be destroyed.

Title 5, section 59026 provides in relevant part that "Generally, a Class 3-Disposable record, unless otherwise specified in this subchapter, *should* be destroyed during the third college year

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[77] *Kern High School Dist., supra*, 30 Cal 4th at p. 743.

[78] California Code of Regulations, title 5, sections 430 and 432, Register 77, No. 39, (Sept. 23, 1977).

[79] *San Diego Unified School Dist., supra*, 33 Cal. 4th at p. 880.

after the college year in which it originated ... ." Title 5, sections 59027 – 59033 set forth the procedures for destruction of records. These sections provide that after a district's chief administrative officer has classified records "Class 3-Disposable" and submitted this list of records recommended to be destroyed, a district governing board must then approve or disapprove the recommendation. Title 5, section 59029 then provides in relevant part, "*Upon the order of the governing board* that specified records shall be destroyed, such records shall be permanently destroyed ... ." Thus, in order for a student record to be destroyed, a community college district must: (1) classify a record to be destroyed, and (2) the governing board of the district must approve and order those records to be destroyed. Like K-12 school districts, the decision to destroy student records is within a community college district's discretion. Therefore, the requirement of Education Code section 76220 to destroy student records according to regulations adopted by the Board of governors does not constitute a state-mandated activity.

Staff finds that the requirement of Education Code sections 49062 and 76220 to destroy pupil/student records according to regulations adopted by the State Board of Education/Board of Governors does not constitute a state-mandated activity. However, staff finds that Education Code sections 49062 and 76220 impose the following state-mandated activities on K-12 school districts and community college districts:

1. Establish and maintain pupil records according to regulations adopted by the State Board of Education. (Ed. Code, § 49062.)
2. Include a pupil's health record in pupil records. (Ed. Code, § 49062.)
3. Establish and maintain student records according to regulations adopted by the Board of Governors. (Ed. Code, § 76220.)

Do the activities mandated by Education Code sections 49062 and 76220 constitute new programs or higher levels of service for K-12 school districts and community college districts?

In order for state-mandated activities to constitute new programs or higher levels of service, the activities must be new in comparison with the pre-existing scheme.[80] Here, the claimants have pled Education Code section 49062, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 10933, and renumbered to current Education Code section 49062 by Statutes 1976, chapter 1010. Similarly, the claimants have pled Education Code section 76220, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 25430.2, and renumbered to current Education Code section 76220 by Statutes 1976, chapter 1010.

Section 49062 (formerly section 10933) as added in 1975, mandates that K-12 school districts establish and maintain pupil records in accordance with regulations adopted by the State Board of Education. In 1980, section 49062 was amended to include the following state-mandated activity, "Include a pupil's health record in pupil records."[81]

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[80] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[81] Statutes 1980, chapter 1347.

In addition, as pled by the claimants, section 76220 mandates community college districts to establish and maintain student records according to regulations adopted by the Board of Governors.

However, in 1963 former Education Code section 1031 provided in relevant part:

> The governing board of every school districts shall:
>
> [¶] ... [¶]
>
> Make or maintain such other records or reports as are required by law.[82]

Also, title 5 of the California Code of Regulations section 432, as amended in 1977, provides in relevant part:

> "Mandatory Interim Pupil Records" are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation. Such records include:
>
> [¶] ... [¶]
>
> Health information ... .[83]

The requirements of former Education Code sections 1031 was made applicable to community college districts by former Education Code section 25422.5 which provided:

> Except as otherwise provided in this code, the powers and duties of community colleges are such as are assigned to high school boards.[84]

Former Education Code section 1031 and 25422.5 were in existence in 1974[85] and were not repealed until the renumbering of the Education Code by Statutes 1976, chapter 1010.[86] As shown by the language of former Education Code section 1031, K-12 school districts and community college districts were required to establish and maintain records as required by law since 1963. "Law" is inclusive of regulations adopted by the State Board of Education and the

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[82] Former Education Code section 1031, subdivision (d) (Stats. 1963, ch. 629).

[83] California Code of Regulations, title 5, section 432, subdivision (b)(2)(B), Register 77, No. 39 (Sept. 23, 1977).

[84] Former Education Code section 25422.5 (Stats. 1970, ch. 102).

[85] Exhibit H, p. 479, "Education Code 1973 – Sections 1-12851" and "Education Code 1973 – Sections 20101-45065." The "Foreword" of these attachments note that these editions of the Education Code show "all sections as they are in effect on and after January 1, 1974."

[86] Exhibit H, p. 647-651, "California State Assembly and Senate Final History – 1973-74 Session" and "California State Assembly and Senate Final History – 1975-76 Session." These documents published by the Legislative Counsel provide an index of each section of the California Constitution, codes and uncodified laws affected by measures introduced during legislative sessions. Both attachments indicate no repeal of former Education Code sections 1031, 1034, and 25422.5 between 1973-1975. Pursuant to Evidence Code section 664 "It is presumed that official duty has been regularly performed."

Board of Governors, as administrative regulations "have the dignity of statutes."[87] In addition, prior to 1980 K-12 school districts were required to include a pupil's health record in pupil records. As a result, the activities mandated by Education Code sections 49062 and 76220 are not new as compared to the pre-existing scheme, and therefore do not constitute new programs or higher levels of service. Staff notes that the claimants have not pled California Code of Regulations, title 5, section 432, and as a result, staff makes no findings regarding California Code of Regulations, title 5, section 432 as amended in 1977.

In Riverside Unified School District's comments to the draft staff analysis dated April 13, 2009, the claimant argues:

> Staff concluded the following activities were imposed by the Education Code:
>
> 1. Establish and maintain pupil records according to regulations adopted by the State Board of Education.
> 2. Include a pupil's health record in pupil's records.
>
> Staff's recommendation to deny reimbursement for the above activities is incorrect as it pertains to the first activity. The basis of denial on the premise of a "pre-existing scheme" is speculative and lacks clarity. Unlike activity two that existed prior to the code sections included in the test claim, activity one should be reimbursable including the activity of destroying records.[88]

To clarify the analysis immediately above, the activity of establishing and maintaining pupil records according to regulations adopted by the State Board of Education does not equate to "establishing and maintaining pupil records." As discussed on page 30 of this analysis, the language, "according to regulations adopted by the State Board of Education," cannot be rendered mere surplusage. Read as a whole, the language of section 49062 requires K-12 school districts to act in accordance with the State Board of Education's regulations. Accordingly, if the State Board of Education's regulations do not require K-12 school districts to act, as in the case of the destruction of records (see page 31-32 of this analysis), then K-12 school districts are not required to engage in that act. As discussed in the analysis immediately above, the requirement to establish and maintain records as are required by law, which includes the State Board of Education's regulations, existed since at least 1963. Thus, the activities mandated by Education Code section 49062 do not constitute a "new program or higher level of service."

In addition, even if section 49062, as added in 1975, were interpreted to specifically require "establishing and maintaining pupil records," former California Code of Regulations, title 5, sections 430-432, as adopted on September 23, 1969 (Register 69, no. 39) already required those activities. Former California Code of Regulations, title 5, section 430 required the principal of each school to "keep on file a record of enrollment and scholarship for each pupil currently enrolled in his school."[89] The former regulation sections also required the records to include

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[87] *Young v. Gannon* (2002) 97 Cal.App.4th 209, 221.

[88] Exhibit I, Riverside Unified School District Comments to Draft Staff Analysis, *supra*, p. 1.

[89] Register 70, number 9 (Feb. 28, 1970), see note regarding adoption of Chapter by Register 69, number 30 (Sept. 23, 1969.)

specific information, and to be retained.[90] Thus, the activities mandated by section 49062 were required prior to 1975, and as a result, do not constitute a new program or higher level of service.

Staff finds that Education Code sections 49062 and 76220 do not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

Fee for Copies of Pupil or Student Records (Ed. Code, §§ 49065 and 76223):

Do Education Code sections 49065 and 76223 mandate any activities?

The claimants assert that sections 49065 and 76223 require K-12 school districts and community college districts to furnish up to two transcripts of former pupils/students' records or up to two verifications of various records of former pupils/students, and to search and retrieve pupil/student records when transcripts or verifications are requested.[91]

The plain language of sections 49065 or 76223, however, does not require K-12 school districts or community college districts to engage in any activities, including those identified by the claimants. Rather, sections 49065 and 76223 provide K-12 school districts and community college districts the authority to charge for copies of any pupil/student record and places limits on this authority. Specifically, section 49065 provides:

> Any school district *may* make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils. No charge may be made to search for or to retrieve any pupil records. (Emphasis added.)

Thus, section 49065 provides K-12 school districts with fee authority by providing that a "school district may make a reasonable charge ... ." The remaining portion of section 49065 acts to limit this fee authority by providing, "however, no charge shall be made for ... ." The language of section 76223 substantively mirrors the language of Education Code section 49065 as made applicable to community college districts, except that the limitations to the fee authority for copies of student records applies to "students" rather than "former pupils." "Pupil record" as used in section 49065 is defined by Education Code section 49061 as:

> [A]ny item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

Education Code section 49061 limits the scope of "pupil record" by providing that:

> "Pupil record" does not include informal notes related to a pupil compiled by a school officer or employee which remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute.

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[90] Former California Code of Regulations, title 5, sections 431 and 432.

[91] Exhibit A, Test claim 02-TC-34, p. 27.

"Directory information" means one or more of the following items: pupil's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the pupil.

"Student record" as used in section 76223 is defined by Education Code section 76210. Section 76210 defines "student record" in a similar manner as "pupil record," however, section 76210 limits the scope of "student record" by providing that:

> "Student record" does not include (A) confidential letters and statements of recommendations maintained by a community college on or before January 1, 1975, if these letters or statements are not used for purposes other than those for which they were specifically intended, (B) information provided by a student's parents relating to applications for financial aid or scholarships, or (C) information related to a student compiled by a community college officer or employee that remains in the sole possession of the maker and is not accessible or revealed to any other person except a substitute. For purposes of this paragraph, "substitute" means a person who performs, on a temporary basis, the duties of the individual who made the notes and does not refer to a person who permanently succeeds the maker of the notes in his or her position.
>
> "Student record" also does not include information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity, and that is created, maintained, or used only in connection with the provision of treatment to the student and is not available to anyone other than persons providing that treatment. However, that record may be personally reviewed by a physician or other appropriate professional of the student's choice.
>
> "Student record" does not include information maintained by a community college law enforcement unit, if the personnel of the unit do not have access to student records pursuant to Section 76243, the information maintained by the unit is kept apart from information maintained pursuant to subdivision (a), the information is maintained solely for law enforcement purposes, and the information is not made available to persons other than law enforcement officials of the same jurisdiction. "Student record" does not include information maintained in the normal course of business pertaining to persons who are employed by a community college, if the information relates exclusively to the person in that person's capacity as an employee and is not available for use for any other purpose.
>
> "Directory information" means one or more of the following items: a student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

As a result, Education Code section 49065 authorizes K-12 school districts to charge a fee not to exceed the actual cost of furnishing copies of *any* pupil record as defined by section 49061. This fee authority does not extend to the first two transcripts of *former* pupils' records or the first two verifications of various records of *former* pupils, or the cost to search for or retrieve the pupil records. Similarly, Education Code section 76223 provides fee authority to community college districts for the actual cost of furnishing copies of *any* student records as defined by section 76210. The fee authority provided by section 76223 does not extend to the first two transcripts of *students*' records or the first two verifications of various records of *students*, or the cost to search for or retrieve the student records. Unlike section 49065, the fee authority provided by section 76223 does not extend to the first two transcripts or various records of both *current* and *former* students.

Thus, pursuant to the plain language of the test claim statutes, staff finds that Education Code sections 49065 and 76223 do not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

Evaluation of K-12 School District Pupil Achievement (Ed. Code, §§ 49067):

Does Education Code section 49067 mandate any activities?

Education Code section 49067 addresses the evaluation of K-12 school districts' pupils' achievement. Section 49067 provides in relevant part:

> (a) The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grace period.
>
> (b) The governing board of any school district *may* adopt regulations authorizing a teacher to assign a failing grade to any pupil whose absences from the teacher's class that are not excused [citation] equal or exceed the maximum number which shall be specified by the board. [¶] ... [¶]. (Emphasis added.)

The remaining portion of subdivision (b) sets forth required content of a K-12 school district's regulations if the governing board of that district *decides* to adopt regulations allowing teachers to assign failing grades due to excessive unexcused absences. Subdivision (c) of section 49067 provides that section 49067 applies to the parent or guardian of any pupil regardless of the pupil's age.

Staff finds that Education Code section 49067 imposes the following state-mandated activity on K-12 school districts:

> Prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. (Ed. Code, § 49067, subd. (a).)

Does the activity mandated by Education Code section 49067 constitute a new program or higher level of service for K-12 school districts?

The claimants have pled Education Code section 49067, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 10938, and renumbered to current Education Code section 49067 by Statutes 1976, chapter 1010. As pled by the claimants, section 49067 imposes the following state-mandated activity:

> Prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. (Ed. Code, § 49067, subd. (a).)

However, in 1973 former Education Code section 10759 provided in relevant part:

> The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent or guardian of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course.[92]

Former Education Code section 10759 was repealed and renumbered to former Education Code section 10938 in 1975 by Statutes 1975, chapter 816. Thus, as shown by the language of former Education Code section 10759, K-12 school districts were already required to prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course since 1973. Thus, the state-mandated activity imposed by Education Code section 49067, subdivision (a) does not constitute a new program or higher level of service. Staff finds that Education Code section 49067 does not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

Transfer of Education Records Between Schools (Ed. Code, §§ 49068 and 76225):

Do Education Code sections 49068 and 76225 mandate any activities?

As noted above in the federal mandates discussion, Education Code sections 49068 and 76225 address the transfer of a pupil's permanent record and a student's appropriate records between schools and institutions of higher education. Because some of the activities required by Education Code sections 49068 and 76225 have already been determined to constitute federal mandates, the following discussion will focus on the portions of Education Code sections 49068 and 76225 that exceed federal law. Education Code section 49068 provides in relevant part:

> Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the

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[92] Former Education Code section 10759 (Stats. 1973, ch. 381), repealed and renumbered to Former Education Code section 10938 by Statutes 1975, chapter 816, repealed and renumbered to Education Code section 49067 by Statutes 1976, chapter 1010.

> pupil's permanent record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. . . .

The language of section 76225 substantively mirrors the language of Education Code section 49068 as made applicable to community college districts, except that section 76225 provides that "appropriate records" shall be transferred upon a request from the student.

The plain language of Education Code sections 49068 and 76225 mandate K-12 school districts and community colleges to perform the following activities:

1. Transfer a pupil's permanent record, or a copy of the permanent record, to the K-12 school district or private school where the pupil intends to enroll upon the request of the K-12 school district or private school where a pupil intends to transfer. (Ed. Code, § 49068.)
2. Transfer appropriate records or a copy thereof to a community college or public or private institution of postsecondary education within California that a student intends to transfer to upon request from the student. (Ed. Code, § 76225.)

Do the activities mandated by Education Code sections 49068 and 76225 constitute new programs or higher levels of service?

The claimants have pled Education Code section 49068, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 10939, and renumbered to current Education Code section 49068 by Statutes 1976, chapter 1010. Similarly, the claimants have pled Education Code section 76224, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 25430.7, and renumbered to current Education Code section 76225 by Statutes 1976, chapter 1010. As pled by the claimants, section 49068 imposes the following state-mandated activity:

> Transfer a pupil's permanent record, or a copy of the permanent record, to the K-12 school district or private school where the pupil intends to enroll upon the request of the K-12 school district or private school where a pupil intends to transfer. (Ed. Code, § 49068.)

In addition as pled by the claimants, section 76225 imposes the following state-mandated activity:

> Transfer appropriate records or a copy thereof to a community college or public or private institution of postsecondary education within California that a student intends to transfer to upon request from the student. (Ed. Code, § 76225.)

However, in 1959 former Education Code section 10752 provided in relevant part:

> Whenever a pupil transfers from one school district to another within this State, the cumulative record of the pupil, which may be available to the pupil's parent for inspection during consultation with a certificated employee of the district, or a copy of the record, shall be transferred to the district to which the pupil transfers;

> provided, a request for such cumulative record is received from the district to which the transfer is made.[93]

The requirements of former Education Code section 10752 was made applicable to community college districts by former Education Code section 25422.5 which provided:

> Except as otherwise provided in this code, the powers and duties of community colleges are such as are assigned to high school boards.[94]

Former Education Code section 10752 was repealed and renumbered to former Education Code section 10939 in 1975 by Statutes 1975, chapter 816. In addition, as noted above, former Education Code section 25422.5 was in existence in 1974[95] and was not repealed until the renumbering of the Education Code by Statutes 1976, chapter 1010.[96] As shown by the above language, prior to 1975, K-12 school districts and community college districts were required to transfer a pupil/student's "cumulative record." Currently, K-12 school districts are required to transfer a pupil's "permanent record," and community colleges districts are required to transfer "appropriate records." The scope of the term "cumulative record" was undefined in the pre-1975 governing statutes. Similarly, the scope of the terms "permanent record," and "appropriate records" are undefined in the governing statutes. As a result, an ambiguity arises to what K-12 school districts and community college districts were required to transfer pre-1975 and what K-12 school districts and community college districts are required to transfer now. Thus, it is necessary to determine what "permanent record," "appropriate records," and "cumulative record" mean.

In order to determine the meaning of "permanent record" and "appropriate records" it is necessary to read these terms in the context of the whole statutory scheme and not as individual parts or words standing alone.[97]

As quoted above, Education Code sections 49062 and 76220 provide that pupil/student records are to be established, maintained, and destroyed according to regulations adopted by the State Board of Education and the Board of Governors. As a result, the Legislature has placed the

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[93] Former Education Code section 10752 (Statutes 1959, ch. 1989), repealed and renumbered to former Education Code section 10939 by Statutes 1975, chapter 816, repealed and renumbered to Education Code section 49068 by Statutes 1976, chapter 1010.

[94] Statutes 1970, chapter 102.

[95] See attachments "Education Code 1973 – Sections 1-12851" and "Education Code 1973 – Sections 20101-45065." The "Foreword" of these attachments note that these editions of the Education Code show "all sections as they are in effect on and after January 1, 1974."

[96] See attachments "California State Assembly and Senate Final History – 1973-74 Session" and "California State Assembly and Senate Final History – 1975-76 Session." These documents published by the Legislative Counsel provide an index of each section of the California Constitution, codes and uncodified laws affected by measures introduced during legislative sessions. Both attachments indicate no repeal of former Education Code sections 1031, 1034, and 25422.5 between 1973-1975. Pursuant to Evidence Code section 664 "It is presumed that official duty has been regularly performed."

[97] *Fontana Unified School Dist., supra*, 45 Cal.3d at p. 218.

authority to define what pupil and student records are to be established in the hands of the Board of Education and the Board of Governors.

The regulations of the Board of Education define "mandatory permanent pupil records" as "those records which are maintained in perpetuity and which schools have been directed to compile by California statute, regulation, or authorized administrative directive."[98] In addition to defining "mandatory permanent pupil records," the Board of Education sets forth definitions for "mandatory interim pupil records," and "permitted pupil records."[99] The Board of Education's regulations then delineates what information each record shall include.[100] Therefore, "permanent record" is a subset of a larger group of records.

The regulations of the Board of Governors do not define "appropriate records." In order to define "appropriate records" it is necessary to view the term "appropriate records" in the context of the whole of Education Code section 76225. "Appropriate records" is used in section 76225 within the context of a student transferring from one community college or public or private institution of postsecondary education to another within the state. It follows that "appropriate records" is limited to those appropriate for the transfer of a student.

As noted above, the pre-1975 governing statutes did not define the scope of "cumulative record" as used in former Education Code section 10752. To determine the scope of "cumulative record" it is necessary to look at the plain language of the term. The American Heritage Dictionary defines "cumulative" as, "Acquired by or resulting from accumulation."[101] Thus, the plain language of former Education Code section 10752 required K-12 school districts and community college districts to transfer the accumulated records of a pupil/student. Therefore, the scope of what former Education Code section 10752 required to be transferred was not limited to a pupil/student's "permanent record" as defined post 1975, nor was it limited to records appropriate for the transfer of a student. Rather, all of the pupil/student records accumulated by a K-12 school district or community college district regarding a particular pupil/student were required to be transferred to the pupil/student's new school or college. As a result, the pupil/student records required to be transferred by former Education Code section 10752 included the "permanent record" and "appropriate records."

Pursuant to the above discussion, former Education Code section 10752 required K-12 school districts and community college districts to transfer a pupil's permanent record and a student's "appropriate records," or a copy of the permanent/appropriate record, to the new school where the pupil/student intends to enroll upon the request of the new school or the student. Thus, the activities required by Education Code sections 49068 and 76225 do not constitute a new program or higher level of service. Staff finds that Education Code sections 49068 and 76225 do not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

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[98] California Code of Regulations, title 5, section 430, Register 77, No. 39 (Sept. 23, 1977).

[99] *Ibid.*

[100] California Code of Regulations, title 5, section 432, subdivision (b)(2)(B), Register 77, No. 39 (Sept. 23, 1977).

[101] American Heritage Dictionary (new college ed. 1979) p. 322.

Foster Family Agency Access to Education Records (Ed. Code, § 49069.3):

Does Education Code section 49069.3 mandate any activities?

Education Code section 49069.3 addresses a foster family agency's access to records of grades, transcripts, and individualized education plans of currently enrolled or former pupils. Specifically, section 49069.3 provides:

> Foster family agencies with jurisdiction over currently enrolled or former pupils may access records of grades and transcripts, and any individualized education plans ... maintained by school districts or private schools of those pupils.

Pursuant to the plain language of section 49069.3, foster family agencies with jurisdiction over a pupil are authorized to access the pupil's records of grades and transcripts and any individualized education plans maintained by K-12 school districts. Although the plain language does not expressly state that a K-12 school district must provide a foster family agency with access to a pupil's record of grades and transcripts, and any individualized education plans, section 49069.3 must be read in the context of the whole statutory scheme and not as individual parts or words standing alone.[102] In addition, section 49069.3 "must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity."[103]

Section 49069.3 was adopted under article 4 of Chapter 6.5 of part 27 of division 4 of title 2 of the Education Code addressing the rights of parents in the context of pupil records. Education Code section 49069, immediately preceding section 49069.3, provides that parents of currently enrolled and former pupils have an absolute right to access any and all pupil records related to their children and requires K-12 school districts to adopt procedures to provide access to parents. "Parents" is defined by Education Code section 49061 as a natural parent, an adopted parent, or legal guardian. Therefore, parents or foster parents who have been made a guardian of a pupil had access to the records of a pupil, but foster family agencies did not.

Immediately following section 49069.3, Education Code section 49069.5 provides in relevant part:

> The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.[104]

In this context, Education Code section 49069.3 was adopted to lessen the negative effect of a pupil's mobility in foster care on the pupil's educational experience. The legislative

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[102] *Fontana Unified School Dist., supra*, 45 Cal.3d at p. 218.

[103] *American Buildings Co. v. Bay Commercial Construction, Inc.* (2002) 99 Cal. App. 4th 1193.

[104] Education Code section 49069.5, subdivision (a) (Stats. 1998, ch. 311).

history of section 49069.3 indicates this intent, acknowledging that:

> ... private foster agencies find it difficult to track the records of children in their care since they do not have direct access except through the government social worker assigned to the pupil's case.
>
> Foster children are placed in numerous homes throughout their stay in foster care. Each time they are moved, the new foster parent must access the pupil's school records and attempt to reconstruct the child's educational background. If the private foster agency had permission to access these records they would be able to take some of the burden off of the new parent, and expedite their review of the child's school records.[105]

In light of the statutory scheme surrounding Education Code section 49069.3 and the legislative intent behind its adoption, a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers is that K-12 school districts are required to provide a foster family agency access to the records of grades and transcripts, and any individualized education plans maintained by the K-12 school district regarding a student under the jurisdiction of the foster family agency. An interpretation to the contrary would render a foster family agency's right to access meaningless.

Staff finds that Education Code section 49069.3 mandates K-12 school districts to perform the following activity:

> Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

Does the activity mandated by Education Code section 49069.3 constitute a new program or higher level of service?

In order for state-mandated activities to constitute new programs or higher levels of service the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.[106] In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.[107] To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.[108]

In *Long Beach Unified School Dist.*, the court held, "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function."[109] Here, the

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[105] Exhibit H, p. 641, Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Assembly Bill 2453 (1999-2000 Reg. Sess.) as amended April 6, 2000.

[106] *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

[107] *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

[108] *Ibid.*

[109] *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d at p. 172.

activity mandated by Education Code section 49069.3 constitutes a program under article XIII B of the California Constitution by carrying out the governmental function of education. The requirement of Education Code section 49069.3 aids a pupil's educational goals by minimizing the disruption to a pupil's education due to transferring between schools. Thus, the activity mandated by Education Code section 49069.3 constitutes a "program."

In addition, prior to the enactment of Education Code section 49069.3 in 2000,[110] K-12 school districts were not required to provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. Staff finds that Education Code section 49069.3 mandates the following new program or higher level of service on K-12 school districts:

> Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

Transfer of Foster Children's Records Between Local Educational Agencies (Ed. Code, § 49069.5):

Does Education Code section 49069.5 mandate any activities?

Education Code section 49069.5 addresses the transfer of foster children's educational and background records from one local educational agency to another. Education Code section 49069.5 was added by Statutes 1998, chapter 311, and subsequently amended by Statutes 2003, chapter 682, and Statutes 2005, chapter 639. As added by Statutes 1998, chapter 311, Education Code section 49069.5 provided:

> (a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.
>
> (b) Upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency, a local education agency with which a pupil in foster care has most recently been enrolled that has been informed of the next educational placement of the pupil shall cooperate with the county social service or probation department to ensure that the pupil's education record is transferred to the receiving local education agency in a timely manner.
>
> (c) Whenever a local educational agency with which a pupil in foster care has most recently been enrolled is informed of the next educational placement of the pupil, that local educational agency shall cooperate with the county social service or probation department to ensure that educational background information for that pupil's health and educational record, as described in Section 16010 of the Welfare and Institutions Code, is transferred to the receiving local educational agency in a timely manner.

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[110] Statutes 2000, chapter 67 (Assem. Bill No. 2453).

(d) Information provided pursuant to subdivision (c) of this section shall include, but not be limited to the following:

(1) The location of the pupil's records.

(2) The last school and teacher of the pupil.

(3) The pupil's current grade level.

(4) Any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

(e) Notice shall be made within five working days and information transferred within five additional working days of receipt of information regarding the new educational placement of the pupil in foster care.

As added in 1998, section 49069.5, subdivision (b) mandates a K-12 school district with which a pupil in foster care has most recently been enrolled to cooperate with the county social service or probation department to ensure that the pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency.

Subdivision (c) of section 49069.5 mandates K-12 school districts to cooperate with the county social service or probation department to ensure that educational background information for that pupil's health and educational record, as described in Welfare and Institutions Code section 16010, is transferred to the receiving local educational agency in a timely manner. Welfare and Institutions Code section 16010 provides that a health and education summary shall include, but is not limited to, the following information: (1) the names and addresses of the child's health, dental, and education providers; (2) the child's grade level performance; (3) the child's school record; (4) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement; (5) a record of the child's immunizations and allergies; (6) the child's known medical problems; (7) the child's current medications; (8) past health problems and hospitalizations; (9) a record of the child's relevant mental health history; (10) the child's known mental health condition and medications; (11) and any other relevant mental health, dental, health, and education information concerning the child determined to be appropriate by the Director of Social Services.[111] Subdivision (d) of section 49069.5, further defines what educational background information is to include.

Subdivision (e) of section 49069.5 provides that "notice shall be made" and "information transferred," however, an ambiguity arises as the plain language of the subdivision is silent as to who is responsible for these activities. Due to this ambiguity, it is necessary to determine whether K-12 school districts are required to provide notice and/or transfer information pursuant to subdivision (e). In order to make this determination, subdivision (e) must be interpreted in light of all of the provisions of section 49069.5. Subdivision (a) and (b) both provide that a K-12 school district must cooperate when it "has been *informed* of the next educational placement of the pupil." In light of this language it is evident that the "notice" referenced in subdivision (e) is notice *to* K-12 school districts, and the requirement that "notice shall be made" is not directed at

[111] Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353).

K-12 school districts. Instead the requirement that "notice shall be made" is directed toward county social service or probation departments, regional centers for the developmentally disabled, or other placing agencies. In regard to the transferring of information, from the plain language of subdivisions (b) and (c), K-12 school districts and the county social service or probation department are to cooperate to ensure the transfer of a pupil's information. As a result, pursuant to subdivision (e) of section 49069.5, K-12 school districts are required to transfer a pupil's information to a pupil's new local educational agency within five working days of notice that the pupil in foster care is transferring.

In 2003, section 49069.5 was substantially amended by Statutes 2003, chapter 862. The claimants have not pled the 2003 amendments, or any subsequent amendments, to section 49069.5, and as a result, staff makes no independent findings regarding section 49069.5, as amended by Statutes 2003, chapter 862, or any amendments thereafter. However, it is necessary to determine whether the activities mandated by section 49069.5, as added in 1998, continue after the operative date of the 2003 amendments.

The 2003 amendments to section 49069.5 removed the requirements as set forth by subdivisions (b)-(d), which required that K-12 school districts cooperate with county social service or probation departments to ensure the transfer of specific pupil information. The 2003 amendment to section 49069.5 continued to require that K-12 school districts "deliver the educational information and records of the pupil to the next educational placement" upon receiving a transfer request from a county placing agency, as previously required by subdivision (e) of the 1998 version of section 49069.5.[112] The operative date of the 2003 amendment is January 1, 2004. As a result, after December 31, 2003, the activities required by Education Code section 49069.5, subdivisions (b)-(d), as added by Statutes 1998, chapter 311, are no longer required. However, the requirement of Education Code section 49069.5, subdivision (e) remains.

In summary, staff finds that Education Code section 49069.5, as added by Statutes 1998, chapter 311, mandates K-12 school districts to perform the following activities:

1. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

2. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the

[112] Education Code section 49069.5, subdivision (d), as amended by Statutes 2003, chapter 862.

pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

Do the mandated activities of Education Code section 49069.5 constitute new programs or higher levels of service?

Education Code section 49069.5 constitutes a "program" by carrying out the governmental function of education. Like Education Code section 49069.3, Education Code section 49069.5 aids a pupil's educational goals by minimizing the disruption to pupils due to transferring between schools. In addition, prior to the enactment of Education Code section 49069.5 in 1998,[113] K-12 school districts were not required to engage in the activities mandated by Education Code section 49069.5. Staff finds that Education Code section 49069.5, as added by Statutes 1998, chapter 311, mandates the following new programs or higher levels of service on K-12 school districts:

1. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

2. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

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[113] Statutes 1998, chapter 311.

Release of Pupil Information to Peace Officers (Ed. Code, § 49076.5):

Does Education Code section 49076.5 mandate any activities?

Education Code section 49076.5 addresses the release of a pupil's information to peace officers. Specifically, section 49076.5 provides:

> (a) Notwithstanding Section 49076, each school district shall release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information.
>
> (b) In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:
>
> (1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.
>
> (2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.
>
> (3) This section does not authorize designated peace officers to obtain any pupil record information other than that authorized by this section.
>
> (4) The law enforcement agency requesting the information shall ensure that at no time shall any information obtained pursuant to this section be disclosed or used for any purpose other than to assist in the investigation of suspected criminal conduct of kidnapping. A violation of this paragraph shall be punishable as a misdemeanor.
>
> (5) The designated peace officer requesting information authorized for release by this section shall make a record on a form created and maintained by the law enforcement agency which shall include the name of the pupil about whom the inquiry was made, the consent of a parent having legal custody of the pupil or a legal guardian, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the school district employee to whom the request was made, and the information that was requested.
>
> (6) Whenever the designated peace officer requesting information authorized for release by this section does so in person, by telephone, or by some means other than in writing, the officer shall provide the school district with a letter

confirming the request for pupil record information prior to any release of information.

(7) No school district, or official or employee thereof, shall be subject to criminal or civil liability for the release of pupil record information in good faith as authorized by this section.

The plain language of Education Code section 49076.5 requires K-12 school districts to release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within California or any other state or to a private school in California to a designated peace officer upon the officer's request, when a proper police purpose exists for the use of that information.

The claimants allege activities resulting from subdivision (b) of section 49076.5;[114] however, as shown by the above quoted language, subdivision (b) defines "proper police purpose" and sets forth requirements of police officers seeking pupil records. Thus, subdivision (b) does not require any activities on K-12 school districts.

Staff finds that Education Code section 49076.5, subdivision (a), mandates K-12 school districts to perform the following activity:

> Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Does the mandated activity of Education Code section 49076.5 constitute a new program or higher level of service?

As noted by the court in *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, police and fire protection are two of the most essential and basic functions of local government.[115] Education Code section 49076.5 was adopted for the purpose of giving peace officers the authority to access the school records of children suspected of having been kidnapped as a method to help find these children.[116] For this reason, Education Code section 49076.5 carries out a governmental function of police protection of children. In addition, prior to 1993,[117] K-12 school districts were not required to release information specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district to designated peace officers. Therefore, staff finds that Education Code section 49076.5 mandates the following new program or higher level of service on K-12 school districts:

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[114] Test claim 02-TC-34, p. 29.

[115] *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d. at p. 537.

[116] Exhibit H, p. 645, Office of Senate Floor Analyses, Analysis of Senate Bill Number 1539 (1993-1994 Reg. Sess.) as amended August 30, 1993.

[117] Statutes 1993, chapter 561.

> Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Provision of Student Information in Compliance with a Court Order or Subpoena (Ed. Code, §§ 49077 and 76244):

Do Education Code sections 49077 and 76244 mandate any activities?

As noted during the federal mandates discussion above, Education Code sections 49077 and 76244 address the provision of pupil/student information in compliance with a court order. Because part of Education Code sections 49077 and 76244 have been determined to constitute federal mandates and court mandates, the following discussion will focus on the parts that exceed federal law and the court mandate. Specifically, section 49077 provides in relevant part:

> Information concerning a student shall be furnished in compliance with a ... lawfully issued subpoena. ... .

The language of section 76244 substantively mirrors the language of Education Code section 49077 as made applicable to community college districts. The plain language of Education Code sections 49077 and 76244 mandate K-12 school districts and community college districts to perform the following activities:

1. Furnish information concerning a pupil in compliance with a lawfully issued subpoena issued by a non-court entity. (Ed. Code, §§ 49077.)
2. Furnish information concerning a student in compliance with a lawfully issued subpoena issued by a non-court entity. (Ed. Code, §§ 76244.)

The claimants note that the test claim does not allege furnishing information in compliance with a court order or lawfully issued subpoena,[118] however, as shown by the plain language of sections 49077 and 76244, K-12 school districts are required to perform the above listed activities.

Do the mandated activities of Education Code sections 49077 and 76244 constitute new programs or higher levels of service?

The claimants have pled Education Code section 49077, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 10948 , and renumbered to current Education Code section 49077 by Statutes 1976, chapter 1010. Similarly, the claimants have pled Education Code section 76244, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 25430.16, and renumbered to current Education Code section 76244 by Statutes 1976, chapter 1010. As pled by the claimants, sections 49077 and 76244 impose the following state-mandated activity:

> Furnish information concerning a pupil/student in compliance with a lawfully issued subpoena issued by a non-court entity.

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[118] Exhibit F, Claimants' response to Chancellor's Office Comments on 02-TC-34, *supra*, p. 14.

However, as set forth in the Code of Civil Procedure sections 1985-1997,[119] K-12 school districts and community college districts were required to furnish information concerning a student in compliance with a lawfully issued subpoena, whether as a witness or via the production of documents, prior to the adoption of the Education Code sections 49077 and 76244. Derived from Statutes 1851, chapter 5, section 402, the Code of Civil Procedure section 1985 defines "subpoena" as a writ or order requiring a person's attendance to testify as a witness or to bring any books, documents, or other things under the witness's control. Also derived from Statutes 1851, chapter 5, sections 409 – 411, the Code of Civil Procedure sections 1985 – 1997, a failure to furnish information in compliance with a lawfully issued subpoena subjects the person in noncompliance to punishment for contempt, forfeiture of five hundred dollars and damages in a civil action, and/or arrest.[120] Thus, K-12 school districts and community college districts were required to furnish information concerning students in compliance with a lawfully issued subpoena prior to 1975 as pled by the claimants. As a result, the activities required by Education Code sections 49077 and 76244 do not constitute new programs or higher levels of service. Therefore staff finds that Education Code sections 49077 and 76244 do not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

Means of Complying with a Lawfully Issued Subpoena or Court Order (Ed. Code, §§ 49078 and 76245):

Do Education Code sections 49078 and 76245 mandate any activities?

Education Code sections 49078 and 76245 address the means of complying with a lawfully issued subpoena or a court order upon a public school/community college employee solely for the purpose of causing him or her to produce a school record pertaining to any pupil/student. Specifically, section 49078 provides:

> The service of a lawfully issued subpoena or a court order upon a public school employee solely for the purpose of causing him or her to produce a school record pertaining to any pupil may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

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[119] See Government Code section 11180 – 11191 for administrative subpoenas (added by Stats. 1945, ch.111).

[120] Code of Civil Procedure sections 1991 – 1993, derived from Statutes 1851, chapter 5, section 409-411. See Government Code sections 11187 – 11189, providing that enforcement of administrative agency subpoena can be enforced through the courts in the same manner provided by the Code of Civil Procedure. Government Code sections added by Statutes 1945, chapter 111.

Section 76245 substantively mirrors Education Code section 49078 as made applicable to community colleges and community college districts.

The claimants assert that sections 49078 and 76245 require K-12 school/community college employees to personally appear as a witness upon service of a lawfully issued subpoena or court order seeking the production of records of a pupil/student, or to submit a copy of the record in lieu of a personal appearance.[121] In response, the Chancellor's Office notes that community college districts are subject to the law of general application set forth in Code of Civil Procedure section 1985 et seq., requiring compliance with subpoenas.[122] The claimants respond that the Chancellor's Office errs in its analysis, because a determination of whether a test claim statute contains a law of general application must be directed to the test claim statute.[123] However, a discussion regarding whether the alleged requirements of section 76245 constitutes a law of general application is unnecessary, because it first must be determined whether the alleged required activities are actually required by the language of the test claim statute.

The plain language of sections 49078 and 76245 do not require any activity of K-12 school districts/community college districts. Rather, the plain language of sections 49078 and 76245 provide an alternative means of complying with a lawfully issued subpoena or court order. Specifically, sections 49078 and 76245 authorize K-12 school/community college employees to submit a copy of a pupil/student's records to a court, agency, or person designated in a subpoena in lieu of personally appearing in court in order to comply with the subpoena (or court order). Therefore staff finds that Education Code sections 49078 and 76245 do not mandate new programs or higher levels of service on K-12 school districts or community college districts subject to article XIII B, section 6 of the California Constitution.

Notification of Victims of Sexual Assault of Disciplinary Actions (Ed. Code, § 76234):

Does Education Code section 76234 mandate any activities?

Education Code section 76234 addresses the notification of an alleged victim of sexual assault or physical abuse of any disciplinary action by the community college taken against any student for the alleged sexual assault or physical abuse and the results of any appeal. Specifically, section 76234 provides:

> Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assault or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. [¶] ... [¶].

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[121] Exhibit A, Test Claim 02-TC-34, p. 30-32.

[122] Exhibit E, Chancellor's Office Comments on 02-TC-34, *supra*, p. 6.

[123] Exhibit F, Claimants' response to Chancellor's Office Comments on 02-TC-34, *supra*, p. 15.

The plain language of section 76234 mandates community colleges to perform the following activity:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

Does the activity mandated by Education Code section 76234 constitute a new program or higher level of service?

Education Code section 76234 constitutes a "program" within the meaning of article XIII B section 6 by carrying out the governmental function of protecting a student's educational records and limiting access to these records to specified instances. In addition, prior to the enactment of Education Code section 76234 in 1989,[124] community colleges were not required to engage in the activities mandated by Education Code section 76234. Staff finds that Education Code section 76234 mandates the following new program or higher level of service on community colleges:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

Adoption of Rules and Regulations for the Implementation of California Law Regarding Student Records (Ed. Code, § 76246):

Does Education Code section 76246 mandate any activities?

Education Code section 76246 addresses the adoption of rules and regulations for the orderly implementation of Education Code sections 76200 – 76246. Specifically, section 76246 provides:

> The Board of Governors of the California Community Colleges shall adopt appropriate rules and regulations to insure the orderly implementation of this chapter. A community college district governing board may adopt rules and regulations which are not inconsistent with this chapter or with those adopted by the board of governors in order to ensure the orderly implementation of this chapter.

The claimants allege that section 76246 requires community college districts to comply with appropriate rules and regulations adopted by the Board of Governors of the California Community Colleges to insure the orderly implementation of this chapter. However, the plain

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[124] Statutes 1989, chapter 593.

language of section 76246 makes no mention of "complying with appropriate rules and regulations adopted by the Board of Governors."[125] Rather, the plain language of section 76246 requires the Board of Governors to adopt rules and regulations, and authorizes the governing boards of community college districts to adopt rules or regulations. As a result, community college districts are not required to engage in any activities pursuant to the plain language of section 76246.

In response to the Chancellor's Office comments that argue that Education Code section 76246 does not require community college districts to engage in any activity, the claimants argue, "Certainly the [Chancellor's Office] cannot mean that community college districts need not comply with appropriate rules and regulations adopted by its Board of Governors."[126] However, a finding that Education Code *section 76246* does not require community college districts to engage in any activities does not lead to a conclusion that community college districts need not comply with the rules and regulations of the Board of Governors. Rather, the finding *only* provides that the plain language of Education Code *section 76246* does not require this activity.

Thus, staff finds that Education Code section 76246 does not mandate a new program or higher level of service on K-12 school districts or community college districts subject to article XIII B, section 6 of the California Constitution.

Summary of new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution:

Pursuant to the above discussion, staff finds that Education Code sections 49069.3, 49069.5, and 49067.5 mandate the following new programs or higher levels of service on K-12 school districts subject to article XIII B, section 6 of the California Constitution:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)
2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)
3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the

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[125] Exhibit A, Test Claim 02-TC-34, p. 32.

[126] Exhibit F, Claimants' response to Chancellor's Office Comments on 02-TC-34, *supra*, p. 16.

pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

4. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

In addition, pursuant to the above discussion staff finds that Education Code sections 76234 mandates the following new program or higher level of service on community college districts subject to article XIII B, section 6 of the California Constitution:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

Issue 3: Do the state-mandated new programs or higher levels of service impose costs mandated by the state on K-12 school districts and community college districts within the meaning of article XIII B, section 6, and Government Code section 17514?

In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.[127] Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The claimants estimated that they "will incur approximately $1,000, or more, annually, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002"[128] to implement all duties alleged by the claimants to be mandated by the state.

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[127] *Lucia Mar*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[128] Exhibit A, Test Claim, Exhibit 1, Declarations of Bill Hendrick and Herman C. Lee.

Thus, staff finds that the record supports the finding of costs mandated by the state and that none of the exceptions in Government Code section 17556 apply to deny these activities. As a result, staff finds that Education Code sections 49069.3, 49069.5, and 49076.5 impose costs mandated by the state on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

4. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Similarly, staff finds that Education Code section 76234 imposes costs mandated by the state on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activity:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a

community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

Staff notes that Education Code sections 49065 and 76220 provide K-12 school districts and community college districts with fee authority to cover "the actual cost of furnishing copies of *any* pupil/student record" as defined by Education Code sections 49061 and 76210. This fee authority does not extend to furnishing the first two transcripts of records of former pupils or current/former students, or the first two verifications of various records of former pupils or current/former students, or the cost of searching for or retrieving any pupil or student record. Subject to the limitations discussed, this fee authority is applicable to all of the state-mandated activities identified above. Therefore, any revenue resulting from the fee authority set forth in Education Code sections 49065 and 76220 is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil records and student records respectively.

Conclusion

Staff concludes that Education Code sections 49069.3, 49069.5, and 49076.5 constitute reimbursable state-mandated programs on kindergarten through 12th grade school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

4. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Staff further concludes that Education Code 76234 constitutes a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activity:

- Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

In addition, staff concludes the fee authority to charge a fee that does not exceed the actual cost of furnishing copies of any pupil/student records, set forth in Education Code sections 49065 and 76223, is applicable to the state-mandated programs described above. This fee authority does not extend to furnishing the first two transcripts of former pupils' records/students' records, or the first two verifications of various records of former pupils/students, or the search for or retrieval of any pupil/student record. Therefore, any revenue resulting from the fee authority set forth in Education Code sections 49065 and 76223 is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil/student records.

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and partially approve this test claim.

PAGES 59-100 LEFT BLANK INTENTIONALLY

SixTen and Associates
Mandate Reimbursement Services

Exhibit A

[redacted]TH B. PETERSEN, MPA, JD, President
[redacted]2 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 19, 2003

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Riverside Unified School District and
Palomar Community College District
Statutes of 2000 / Chapter 67
Student Records

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Riverside Unified School District and Palomar Community College District test claim for the above referenced mandate.

I have been appointed by the Districts as their representative for the test claim. The Districts request that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Michael H. Fine
Deputy Superintendent
Business Services & Governmental Relations Division
Riverside Unified School District
3380 14th Street
Riverside, CA 92501 AND

Paula Higashi, Executive Director,
Commission on State Mandates

June 19, 2003

Jerry R. Patton
Assistant Superintendent/Vice President
Finance and Administration Services
Palomar Community College District
1140 West Mission Road
San Marcos, CA 92069-1487

The Commission regulations provide for an informal conference of the interested parties within thirty days.

If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: Michael H. Fine, Deputy Superintendent
Business Services & Governmental Relations Division
Riverside Unified School District

Bill Hendrick, PhD, Director Pupil Services Department
Riverside Unified School District

Jerry R. Patton
Assistant Superintendent/Vice President
Finance and Administration Services
Palomar Community College District

Herman C. Lee, Director, Enrollment Services
Palomar Community College District

Thomas Donner, Chair EMCN College Committee
Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, CA 90405-1628

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

TEST CLAIM FORM

Claim No.

Local Agency or School District Submitting Claim

RIVERSIDE UNIFIED SCHOOL DISTRICT and **PALOMAR COMMUNITY COLLEGE DISTRICT**

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Riverside Unified School District 3380 14th Street Riverside, California 92501	Palomar Community College District 1140 West Mission Road San Marcos, California 92069-1487

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable. **Student Records**

Chapter 67, Statutes of 2000	Education Code Section 49062	Education Code Section 76220
Chapter 846, Statutes of 1998	Education Code Section 49065	Education Code Section 76223
Chapter 311, Statutes of 1998	Education Code Section 49067	Education Code Section 76225
Chapter 879, Statutes of 1996	Education Code Section 49068	Education Code Section 76234
Chapter 758, Statutes of 1995	Education Code Section 49069.3	Education Code Section 76244
Chapter 561, Statutes of 1993	Education Code Section 49069.5	Education Code Section 76245
Chapter 593, Statutes of 1989	Education Code Section 49076.5	Education Code Section 76246
Chapter 498, Statutes of 1983	Education Code Section 49077	
Chapter 1347, Statutes of 1980	Education Code Section 49078	
Chapter 1297, Statutes of 1976		
Chapter 816, Statutes of 1975		

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
Michael H. Fine Deputy Superintendent Business Services & Governmental Relations Division	909-788-1020

Signature of Authorized Representative	Date
X Michael H. Fine	June 13, 2003

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
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COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No.

Local Agency or School District Submitting Claim

RIVERSIDE UNIFIED SCHOOL DISTRICT and **PALOMAR COMMUNITY COLLEGE DISTRICT**

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Riverside Unified School District 3380 14th Street Riverside, California 92501	Palomar Community College District 1140 West Mission Road San Marcos, California 92069-1487

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable. **Student Records**

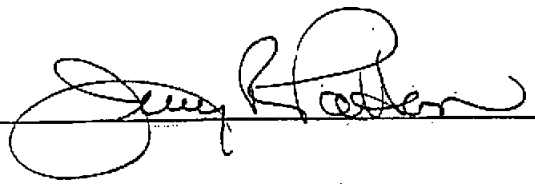
Chapter 67, Statutes of 2000
Chapter 846, Statutes of 1998
Chapter 311, Statutes of 1998
Chapter 879, Statutes of 1996
Chapter 758, Statutes of 1995
Chapter 561, Statutes of 1993
Chapter 593, Statutes of 1989
Chapter 498, Statutes of 1983
Chapter 1347, Statutes of 1980
Chapter 1297, Statutes of 1976
Chapter 816, Statutes of 1975

Education Code Section 49062
Education Code Section 49065
Education Code Section 49067
Education Code Section 49068
Education Code Section 49069.3
Education Code Section 49069.5
Education Code Section 49076.5
Education Code Section 49077
Education Code Section 49078

Education Code Section 76220
Education Code Section 76223
Education Code Section 76225
Education Code Section 76234
Education Code Section 76244
Education Code Section 76245
Education Code Section 76246

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
Jerry R. Patton Assistant Superintendent/Vice President Finance and Administration Services	(760) 744-1150

Signature of Authorized Representative	Date
X 	6/10/03

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

	No. CSM _____
Test Claim of:	Chapter 67, Statutes of 2000 Chapter 846, Statutes of 1998 Chapter 311, Statutes of 1998 Chapter 879, Statutes of 1996
Riverside Unified School District	Chapter 758, Statutes of 1995 Chapter 561, Statutes of 1993 Chapter 593, Statutes of 1989
and	Chapter 498, Statutes of 1983 Chapter 1347, Statutes of 1980
Palomar Community College District	Chapter 1297, Statutes of 1976 Chapter 816, Statutes of 1975
	Education Code Section 49062 Education Code Section 49065 Education Code Section 49067
Test Claimants	Education Code Section 49068 Education Code Section 49069.3 Education Code Section 49069.5 Education Code Section 49076.5 Education Code Section 49077 Education Code Section 49078 Education Code Section 76220 Education Code Section 76223 Education Code Section 76225 Education Code Section 76234 Education Code Section 76244 Education Code Section 76245 Education Code Section 76246
	Student Records
	TEST CLAIM FILING

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Riverside Unified School District and Palomar Community College District are "school districts" as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts, county offices of education, and community college districts to develop and implement policies and procedures to search and retrieve, furnish and forward student records.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Prior to January 1, 1975, there were no statutes, code sections or regulations which required school districts to search and retrieve, furnish or forward student records as hereinafter described.

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

A. SCHOOL DISTRICTS

[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

Chapter 816, Statutes of 1975, Section 4, added Education Code Section 10932[2]. Subdivision (b) defines "pupil record" as any information directly related to a pupil, other than directory information, not including informal notes made by a school officer or employee. Subdivision (d) defines "school district" to mean any school district that

[2] Education Code Section 10932, as added by Chapter 816, Statutes of 1975, Section 4:

"(a) "Parent" means a natural parent, an adopted parent, or legal guardian. If parents are divorced or legally separated, only the parent having legal custody of the pupil may consent to release records to others pursuant to Section 10946, provided, however, that either parent may grant consent if both parents have notified, in writing, the school or school district that such an agreement has been made. Whenever a pupil has attained the age of 18 years or is attending an institution of postsecondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the pupil shall thereafter only be required of, and accorded to, the pupil.

(b) "Pupil record" means any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by any employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Pupil record" shall not include informal notes related to a pupil compiled by a school officer or employee which remains in the sole possession of the maker and is not accessible or revealed to any other person.

(c) "Directory information" means one or more of the following items: student's name, address, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the student.

(d) "School district" means any school district maintaining any of grades kindergarten through 12, any public school providing instruction in any of grades kindergarten through 12, the office of the county superintendent of schools, or any special school operated by the Department of Education.

(e) "Access" means a personal inspection and review of a record or an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, or a request to release a copy of any record."

maintains any of grades K-12, any special school operated by the Department of Education, or the office of the county superintendent of schools.

Chapter 816, Statutes of 1975, Section 4, added Education Code Section 10933[3] which requires school districts to establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education; and prohibited destruction of pupil records except pursuant to those regulations.

Chapter 816, Statutes of 1975, Section 4, added Education Code Section 10936[4] which requires school districts to furnish up to two transcripts or up to two verifications of former pupil's records without charge.

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[3] Education Code Section 10933, as added by Chapter 816, Statutes of 1975, Section 4:

"School districts shall establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. Such regulations shall establish state policy as to what items of information shall be placed into pupil records and what information is appropriate to be compiled by individual school officers or employees under the exception to pupil records provided in subdivision (b) of Section 10932. No pupil records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 10941."

[4] Education Code Section 10936, as added by Chapter 816, Statutes of 1975, Section 4:

"Any school district may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils."

Chapter 816, Statutes of 1975, Section 4, added Education Code Section 10938[5] which requires school districts to prescribe regulations which require the evaluation of each pupil's achievement for each marking period. If the pupil is in danger of failing a course, a conference with, or a written report to, the parent of the pupil is required.

Chapter 816, Statutes of 1975, Section 4, added Education Code Section 10939[6] which requires school districts to adopt rules and regulations concerning the

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[5] Education Code Section 10938,as added by Chapter 816, Statutes of 1975, Section 4:

"(a) The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

(b) The governing board of any school district may adopt regulations authorizing a teacher to assign a failing grade to any pupil whose absences from the teacher's class that are not excused pursuant to Section 48205 equal or exceed a maximum number which shall be specified by the board. Regulations adopted pursuant to this subdivision shall include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

(c) Notwithstanding the provisions of subdivision (a) of Section 49061, the provisions of this section shall apply to the parent or guardian of any pupil without regard to the age of the pupil."

[6] Education Code Section 10939, as added by Chapter 816, Statutes of 1975, Section 4:

"Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent enrollment and scholarship record or a copy thereof shall be transferred by

transfer of student records between a pupil's current and former school. A notice shall be given to the parent informing them of their right to receive a copy and right to challenge the content of the record.

Chapter 816, Statues of 1975, Section 4, added Education Code Section 10948[7] which requires information to be released in compliance with a court order, and, for the first time, requires the pupil and parent to be notified in advance.

Chapter 816, Statutes of 1975, Section 4, added Education Code Section 10949[8]

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the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. The State Board of Education is hereby authorized to adopt rules and regulations concerning the transfer of records."

[7] Education Code Section 10948, as added by Chapter 816, Statutes of 1975, Section 4:

"Information concerning a student shall be furnished in compliance with a court order. The parent and the pupil shall be notified in advance of such compliance by the school employee who complies and releases the information if lawfully possible within the requirements of the judicial order."

[8] Education Code Section 10949, as added by Chapter 816, Statutes of 1975, Section 4:

"The service of a subpoena upon a public school employee solely for the purpose of causing him to produce a school record pertaining to any pupil may be complied with by employee, in lieu of personal appearance as a witness in the proceeding, by submitting to the court, or other agency issuing the subpoena, at the time and place required by the subpoena, a copy of record, accompanied by an affidavit certifying that copy is a true copy of the original record on file in the school or school office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof."

which requires school district employees to comply with a subpoena to furnish information concerning a student. In lieu of appearing as a witness, the employee may provide a copy of the record along with an affidavit certifying that the record is a true copy of the original.

Chapter 1010, Statutes of 1976, operative April 30, 1977, recodified and renumbered the Education Code. The relevant code section numbers for school districts cited above, before and after, are as follows:

Former Code Section	Renumbered Code Section
10932	49061
10933	49062
10936	49065
10938	49067
10939	49068
10948	49077
10949	49078

Chapter 1297, Statutes of 1976, Section 1, amended Education Code Section 10932[9], subdivision (a), to limit section 10941 challenges to custodial parents and

[9] Education Code Section 10932, added by Chapter 816, Statutes of 1975, Section 4, as amended by Chapter 1297, Statutes of 1976, Section 1:

"(a) "Parent" means a natural parent, an ~~adopted~~ adoptive parent, or legal guardian. If parents are divorced or legally separated, only the parent having legal custody of the pupil may challenge the content of a record pursuant to Section 10941.

guardians. Subdivision (b) was amended to expand the term "maker" to include "substitutes".

Chapter 1297, Statutes of 1976, Section 4.5, amended Education Code Section 10936[10] to require school districts to search for or retrieve any pupil record free of

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offer a written response to a record pursuant to Section 10943, or consent to release records to others pursuant to Section 10946, provided, however, that either parent may grant consent if both parents have notified, in writing, the school or school district that such an agreement has been made. Whenever a pupil has attained the age of 18 years or is attending an institution of postsecondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the pupil shall thereafter only be required of, and accorded to, the pupil.

(b) "Pupil record" means any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by any employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Pupil record" shall not include informal notes related to a pupil compiled by a school officer or employee which remains in the sole possession of the maker and ~~is~~ are not accessible or revealed to any other person except a substitute. For purposes of this subdivision, "substitute" means a person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

(c) "Directory information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the student.

(d) "School district" means any school district maintaining any of grades kindergarten through 12, any public school providing instruction in any of grades kindergarten through 12, the office of the county superintendent of schools, or any special school operated by the Department of Education.

(e) "Access" means a personal inspection and review of a record or an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, or and a request to release a copy of any record."

[10] Education Code Section 10936, added by Chapter 816, Statutes of 1975, Section 4, as amended by Chapter 1297, Statutes of 1976, Section 4.5.

charge.

Chapter 1297, Statutes of 1976, Section 5, amended Education Code Section 10939 to make technical changes.

Chapter 1297, Statutes of 1976, Section 9.5, amended Education Code Section 10948[11] to require the school district to make a "reasonable effort" to notify the pupil and the parent in advance of complying with a judicial order.

Chapter 36, Statutes of 1977, Sections 210, 212, 213, and 218 amended Education Code Sections 49061, 49065, 49068 and 49077 respectively to make technical changes.

Chapter 928, Statutes of 1978, Section 3, amended Education Code Section 49061[12] to modify the definition of the term "access" to include the receipt of an accurate

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"Any school district may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record, provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils. No charge may be made to search for or to retrieve any pupil record."

[11] Education Code Section 10948, added by Chapter 816, Statutes of 1975, Section 4, as amended by Chapter 1297, Statutes of 1976, Section 9.5:

"Information concerning a student shall be furnished in compliance with a court order. ~~The parent and the pupil shall be notified in advance of such compliance by the school employee who complies and releases the information~~ The school district shall make a reasonable effort to notify the parent and the pupil in advance of such compliance if lawfully possible within the requirements of the judicial order."

[12] Education Code Section 49061, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 928, Statutes of 1978, Section 3:

copy of a record.

Chapter 1347, Statutes of 1980, Section 1, amended Education Code Section 49062[13] to make technical changes and to provide that pupil records shall include a pupil's health record.

Chapter 498, Statutes of 1983, Section 92, amended Education Code Section 49067[14] to add subdivision (b), which requires school districts to assign a failing grade

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"(e) "Access" means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record."

[13] Education Code Section 49062, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 1347, Statutes of 1980, Section 1:

"School districts shall establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. Pupil records shall include a pupil's health record. Such regulations shall establish state policy as to what items of information shall be placed into pupil records and what information is appropriate to be compiled by individual school officers or employees under the exception to pupil records provided in subdivision (b) of Section ~~10932~~ 49061. No pupil records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section ~~10941~~ 49070."

[14] Education Code Section 49067, formerly Section 10938, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 498, Statutes of 1983, Section 92:

"(a) The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall

based on absences based on a maximum number given by the board, and to make technical changes.

Chapter 561, Statutes of 1993, Section 1, added Education Code Section 49076.5[15]. Subdivision (a) requires school districts to provide information, upon

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not preclude failing the pupil at the end of the grading period.

(b) The governing board of any school district may adopt regulations authorizing a teacher to assign a failing grade to any pupil whose unexcused absences from the teacher's class equal or exceed a maximum number which shall be specified by the board. Regulations adopted pursuant to this subdivision shall include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

(c) Notwithstanding the provisions of subdivision (a) of Section 49061, the provisions of this section shall apply to the parent or guardian of any pupil without regard to the age of the pupil."

[15] Education Code Section 49076.5, as added by Chapter 561, Statutes of 1993, Section 1:

"(a) Notwithstanding Section 49076, each school district shall release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information.

(b) In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law

request of a peace officer, regarding a pupil's identity or location as it relates to the transfer of that pupil's record to another school. Subdivision (b) requires the request for information to meet the following: (1) probable cause must exist that the pupil has been kidnapped and the abductor may have enrolled the pupil in another school, (2) only designated peace officers may request the information, (3) no other information shall be released, (4) the law enforcement agency requesting the information shall ensure that the information provided is used only for the purpose of assisting in the investigation of

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enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

(3) This section does not authorize designated peace officers to obtain any pupil record information other than that authorized by this section.

(4) The law enforcement agency requesting the information shall ensure that at no time shall any information obtained pursuant to this section be disclosed or used for any purpose other than to assist in the investigation of suspected criminal conduct of kidnapping. A violation of this paragraph shall be punishable as a misdemeanor.

(5) The designated peace officer requesting information authorized for release by this section shall make a record on a form created and maintained by the law enforcement agency which shall include the name of the pupil about whom the inquiry was made, the consent of a parent having legal custody of the pupil or a legal guardian, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the school district employee to whom the request was made, and the information that was requested.

(6) Whenever the designated peace officer requesting information authorized for release by this section does so in person, by telephone, or by some means other than in writing, the officer shall provide the school district with a letter confirming the request for pupil record information prior to any release of information.

(7) No school district, or official or employee thereof, shall be subject to criminal or civil liability for the release of pupil record information in good faith as authorized by this section."

the kidnapping, (5) a record shall be made by the requesting peace officer which includes, the name of the pupil, consent from the parent, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the name of the school district employee to whom the request was made, and the information requested, and (7) releases school districts from criminal and civil liability for providing the information.

Chapter 879, Statutes of 1996, Section 2, amended Education Code Section 49077[16] to include "guardian", and to require school districts to provide information with a lawfully issued subpoena in addition to court orders, and to make other technical changes.

Chapter 879, Statutes of 1996, Section 2, amended Education Code Section 49078[17] to include a lawfully issued subpoena or a court order, and to make technical

[16] Education Code Section 49077, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 879, Statutes of 1996, Section 2:

"Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The school district shall make a reasonable effort to notify the parent or legal guardian and the pupil in advance of ~~such~~ compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the ~~judicial~~ order."

[17] Education Code Section 49078, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 879, Statutes of 1996, Section 3:

"The service of a lawfully issued subpoena or a court order upon a public school employee solely for the purpose of causing him or her to produce a school record pertaining to any pupil may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency

changes.

Chapter 311, Statutes of 1998, Section 2, added Education Code Section 49069.5[18]. Subdivision (a), requires swift and efficient transfer of pupil records for pupils

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~~issuing~~, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof."

[18] Education Code Section 49069.5, as added by Chapter 311, Statutes of 1998, Section 2:

"(a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(b) Upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency, a local education agency with which a pupil in foster care has most recently been enrolled that has been informed of the next educational placement of the pupil shall cooperate with the county social service or probation department to ensure that the pupil's education record is transferred to the receiving local education agency in a timely manner.

(c) Whenever a local educational agency with which a pupil in foster care has most recently been enrolled is informed of the next educational placement of the pupil, that local educational agency shall cooperate with the county social service or probation department to ensure that educational background information for that pupil's health and educational record, as described in Section 16010 of the Welfare and Institutions Code, is transferred to the receiving local educational agency in a timely manner.

(d) Information provided pursuant to subdivision (c) of this section shall include, but not be limited to the following:

(1) The location of the pupil's records.

(2) The last school and teacher of the pupil.

(3) The pupil's current grade level.

(4) Any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

(e) Notice shall be made within five working days and information transferred

in foster care. Subdivision (b) requires school districts to transfer a foster child's record quickly upon request of any social services or probation department, or any other placing agency. Subdivision (c) requires school districts to transfer educational background information for that pupil's health and educational record. Subdivision (d) defines educational background to include, (1) the location of pupil records, (2) the last school and teacher of the pupil, (3) the pupil's current grade level, and (4) information deemed necessary to enable enrollment at the receiving school. Subdivision (e) requires notice to be given and information transferred within five working days regarding the educational placement of a pupil in foster care.

Chapter 846, Statutes of 1998, Section 20, amended Education Code Section 49067 to make technical changes.

Chapter 67, Statutes of 2000, Section 1, added Education Code Section 49069.3[19] which requires school districts to allow foster family agencies with jurisdiction over a pupil to access records of grades and transcripts.

B. COMMUNITY COLLEGES.

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within five additional working days of receipt of information regarding the new educational placement of the pupil in foster care."

[19] Education Code Section 49069.3, as added by Chapter 67, Statutes of 2000, Section 1:

"Foster family agencies with jurisdiction over currently enrolled or former pupils may access records of grades and transcripts, and any individualized education plans (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 maintained by school districts or private schools of those pupils."

Chapter 816, Statutes of 1975, Section 7, added Education Code Section 25430.1[20]. Subdivision (a) defines "student record". Subdivision (b) provides that "student record" does not mean information held by law enforcement.

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[20] Education Code Section 25430.1, as added by Chapter 816, Statutes of 1975, Section 7:

"(a)"Student record" means any item of information directly related to an identifiable student, other than directory information, which is maintained by a community college or required to be maintained by any employee in the performance of his duties, whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Student record" shall not mean information provided by a student's parents relating to applications for financial aid or scholarships, nor shall it mean information related to a student compiled by a community college officer or employee which remains in the sole possession of the maker and is not accessible or revealed to any other person including information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment; provided, however, that such records may be personally reviewed by a physician or other appropriate professional of the student's choice.

(b) "Student record" shall not mean information maintained by a law enforcement unit, if the personnel of the unit do not have access to student records pursuant to Section 25430.15, if the information maintained by the unit is kept apart from information maintained pursuant to subdivision (a), of this section, if the information is maintained solely for law enforcement purposes, and if the information is not made available to persons other than law enforcement officials of the same jurisdiction. (c)"Directory information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

(d) "Access" means a personal inspection and review of a record or an accurate copy of a record, or an oral description or communication of a record or an accurate copy of a record, or a request to release a copy of any record."

Chapter 816, Statutes of 1975, Section 7, added Education Code Section 25430.2[21] which requires community college districts to establish, maintain and destroy student records according to regulations adopted by the Board of Governors of the California Community Colleges.

Chapter 816, Statutes of 1975, Section 7, added Education Code Section 25430.5[22] which requires community colleges to provide, free of charge, up to two transcripts and two verifications of records of former students.

Chapter 816, Statutes of 1975, Section 7, added Education Code Section

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[21] Education Code Section 25430.2, as added by Chapter 816, Statutes of 1975, Section 7:

"Community college districts shall establish, maintain, and destroy student records according to regulations adopted by the Board of Governors of the California Community Colleges. Such regulations shall establish state policy as to what items of information shall be placed into student records and what information is appropriate to be compiled by individual community college officers or employees under the exception to student records provided in subdivisions (a) and (b) of Section 76210. No student records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 76232."

[22] Education Code Section 25430.5, as added by Chapter 816, Statutes of 1975, Section 7:

"Any community college may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former students' records or (2) up to two verifications of various records of former students."

25430.7[23] to require community colleges, upon request, to transfer appropriate student records to a school where the student intends to enroll, to notify students when their records are being transferred to another school, to notify them of their right to receive a copy of the record and to a hearing to challenge the content of the record.

Chapter 816, Statutes of 1975, Section 7, added Education Code Section 25430.16[24] which requires community colleges to furnish information concerning a

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[23]Education Code Section 25430.7, as added by Chapter 816, Statutes of 1975, Section 7:

"Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, college or university, or school or school district upon a request from the community college, college or university, or school or school district where the student intends to enroll; provided, however, that the community college, college or university , or school or school district from which the student is transferring may notify the community college, college or university, or school or school district making such a request that the student's records will be transferred upon payment by the student of all fees and charges due the community college, college or university, or school or school district. Any community college, college or university, or school district making such a transfer of such records shall notify the student of his right to receive a copy of the record and his right to a hearing to challenge the content of the record.

The Board of Governors of the California Community Colleges may adopt rules and regulations concerning transfer of such records to, from, or between schools under its jurisdiction."

[24] Education Code Section 25430.16, as added by Chapter 816, Statutes of 1975, Section 7:

"Information concerning a student shall be furnished in compliance with a court order. The student shall be notified in advance of such compliance by the college employee who complies and releases the information if lawfully possible within the requirements of the judicial order."

student in compliance with a court order and requires them to notify the student in advance of complying with the order.

Chapter 816, Statutes of 1975, Section 7, added Education Code Section 25430.17[25] which requires community college employees to comply with a subpoena to furnish information concerning a student. In lieu of appearing as a witness, the employee may provide a copy of the record along with an affidavit certifying that the record is a true copy of the original.

Chapter 816, Statutes of 1975, Section 7, added Education Code Section 25430.18[26] which requires the Board of Governors to adopt rules and regulations

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[25] Education Code Section 25430.17, as added by Chapter 816, Statutes of 1975, Section 7:

"The service of a subpoena upon a community college employee solely for the purpose of causing him to produce a school record pertaining to any student may be complied with by such employee, in lieu of personal appearance as a witness in the proceeding, by submitting to the court, or other agency issuing the subpoena, at the time and place required by the subpoena, a copy of such record, accompanied by an affidavit certifying that such copy is a true copy of the original record on file in the community college or community college office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof."

[26] Education Code Section 25430.18, added by Chapter 816, Statutes of 1975, Section 7:

"The Board of Governors of the California Community Colleges shall adopt appropriate rules and regulations to insure the orderly implementation of this chapter. A community college district governing board may adopt rules and regulations which are not inconsistent with this chapter or with those adopted by the board of governors in order to ensure the orderly implementation of this chapter."

consistent with the chapter pertaining to student records to insure orderly implementation.

Chapter 1010, Statutes of 1976, operative April 30, 1977, recodified and renumbered the Education Code. The relevant code sections for community colleges cited above, before and after, are as follows:

25430.1	76210
25430.2	76220
25430.5	76223
25430.7	76225
25430.16	76244
25430.17	76245
25430.18	76246

Chapter 1297, Statutes of 1976, Section 11, amended Education Code Section 25430.1[27], subdivision (a), to exclude confidential letters and statements of

[27] Education Code Section 25430.1, added by Chapter 816, Statutes of 1975, Section 7, as amended by Chapter 1297, Statutes of 1976, Section 11:

"As used in this chapter:

(a)"Student record" means any item of information directly related to an identifiable student, other than directory information, which is maintained by a community college or required to be maintained by any employee in the performance of his duties, whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Student record" shall not mean information provided by a student's parents relating to applications for financial aid or scholarships, nor shall it mean confidential letters and statements of recommendations maintained by a community college on or before January 1, 1975, provided that such letters or statements are not used for purposes other than those for which they were specifically intended, nor shall it mean

recommendations from "student record" and expanded the term "maker of information" to include substitutes. Subdivision (b) was amended to expand the exclusion to include information maintained in the normal course of business pertaining to district employees.

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information related to a student compiled by a community college officer or employee which remains in the sole possession of the maker and is not accessible or revealed to any other person except a substitute. For purposes of this subdivision, "substitute" shall mean a person who performs on a temporary basis the duties of the individual who made the notes and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

"Student record" shall also not include ~~including~~ information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which ~~are~~ is created, maintained, or used only in connection with the provision of treatment to the student and ~~are~~ is not available to anyone other than persons providing such treatment; provided, however, that such ~~records~~ a record may be personally reviewed by a physician or other appropriate professional of the student's choice.

(b) "Student record" shall not mean information maintained by a community college law enforcement unit, if the personnel of the unit do not have access to student records pursuant to Section 25430.15, if the information maintained by the unit is kept apart from information maintained pursuant to subdivision (a), of this section, if the information is maintained solely for law enforcement purposes, and if the information is not made available to persons other than law enforcement officials of the same jurisdiction, nor shall it mean information maintained in the normal course of business pertaining to persons who are employed by a community college, provided that such information relates exclusively to such person in that person's capacity as an employee and is not available for use for any other purpose.

(c) "Directory information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

(d) "Access" means a personal inspection and review of a record or an accurate copy of a record, ~~or~~ an oral description or communication of a record or an accurate copy of a record, ~~or~~ and a request to release a copy of any record."

Chapter 1297, Statutes of 1976, Section 15, amended Education Code Section 25430.5[28] to require the furnishing of copies of all students (not just former students) and to prohibit community colleges from charging for the searching or retrieving of records.

Chapter 1297, Statutes of 1976, Section 16, amended Education Code Section 25430.7[29] to require the request for a transfer of a student's records to be initiated by

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[28] Education Code Section 25430.5, added by Chapter 816, Statutes of 1975, Section 7, as amended by Chapter 1297, Statutes of 1976, Section 15:

"Any community college may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of ~~former~~ students' records or (2) up to two verifications of various records of ~~former~~ students. No charge may be made to search for or to retrieve any student record."

[29] Education Code Section 25430.7, added by Chapter 816, Statutes of 1975, Section 7, as amended by Chapter 1297, Statutes of 1976, Section 16:

"Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, college or university, or school or school district upon a request from the ~~community college, college or university, or school or school district where the student intends to enroll;~~ student; provided, however, that the community college, college or university, or school or school district from which the student is transferring may notify the ~~community college, college or university, or school or school district making such a request~~ student that the student's records will be transferred upon payment by the student of all fees and charges due the community college, college or university, or school or school district. Any community college, college or university, or school district making such a transfer of such records shall notify the student of his right to receive a copy of the record and his right to a hearing to challenge the content of the record.

The Board of Governors of the California Community Colleges may adopt rules and regulations concerning transfer of such records to, from, or between schools under its jurisdiction."

the student and not the school or district where the student intends to enroll. The transferor school or district shall also notify the student that fees and charges must be paid before the transfer of records and that he or she has a right to receive a copy of the record and a right to challenge the contents of the record.

Chapter 1297, Statutes of 1976, Section 21.5, amended Education Code Section 76244[30] to require community colleges to make a reasonable effort to notify students in advance of compliance with a court order.

Chapter 36, Statutes of 1977, Sections 295, 297, 298 and 305 amended Education Code Sections 76210, 76223, 76225 and 76244 respectively, to make technical changes.

Chapter 593, Statutes of 1989, Section 3, added Education Code Section 76234[31] to require community colleges to inform the victim of a sexual assault of the

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[30] Education Code Section 25430.16, added by Chapter 816, Statutes of 1975, Section 7, as amended by Chapter 1297, Statutes of 1976, Section 21.5:

"Information concerning a student shall be furnished in compliance with a court order. The ~~student~~ community college district shall make a reasonable effort to notify the student ~~be notified~~ in advance of such compliance ~~by the college employee who complies and releases the information~~ if lawfully possible within the requirements of the judicial order."

[31] Education Code Section 76234, as added by Chapter 893, Statues of 1989, Section 3:

"Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that

results of any disciplinary action taken.

Chapter 758, Statutes of 1995, Section 90, amended Education Code Section 76210[32] to combine subdivision (a) and (b) into a new subdivision (a). Former subdivisions (c) and (d), were relettered as subdivisions (b) and (c), respectively. Other technical changes were also made.

Chapter 758, Statutes of 1995, Section 91, amended Education Code Section 76225 to make technical changes.

Chapter 758, Statutes of 1995, Section 95, amended Education Code Section 76245 to make technical changes.

Chapter 879, Statutes of 1996, Section 4, amended Education code Section

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threatens the health and safety of the alleged victim, the alleged victim of that sexual assualt [sic.] or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. The alleged victim shall keep the results of that disciplinary action and appeal confidential."

[32] Education Code Section 76210, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 758, Statutes of 1995, Section 90:

"~~(c)~~ (b) "Directory information" means one or more of the following items: a student's name, address, telephone number, date and place of birth, major field of study, ~~class schedule,~~ participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

~~(d)~~ (c) "Access" means a personal inspection and review of a record or an accurate copy of a record, or an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record."

76244[33] to include a lawfully issued subpoena in addition to a court order and to make technical changes.

Chapter 879, Statutes of 1996, Section 5, amended Education Code Section 76245[34] to include a court order served on a community college employee, and to make technical changes.

PART III. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The Statutes and Education Code Sections referenced in this test claim result in

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[33] Education Code Section 76244, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 879, Statutes of 1996, Section 4:

"Information concerning a student shall be furnished in compliance with a court order or lawfully issued subpoena. The community college district shall make a reasonable effort to notify the student in advance of ~~such~~ compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the ~~judicial~~ order."

[34] Education Code Section 76245, former Section 25430.17, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 879, Statutes of 1996, Section 5:

"The service of a lawfully issued subpoena or a court order upon a community college employee solely for the purpose of causing ~~him~~ the employee to produce a school record pertaining to any student may be complied with by ~~such~~ that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency ~~issuing~~ or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of ~~such~~ that record, accompanied by an affidavit certifying that ~~such~~ the copy is a true copy of the original record on file in the community college or community college office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof."

school districts incurring costs mandated by the state, as defined in Government Code section 17514[35], by creating new state-mandated duties related to the uniquely governmental function of providing public education and service to students and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[36]

The new duties mandated by the state upon school districts, county offices of education and community colleges require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

I. SCHOOL DISTRICTS

[35] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

[36] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

A) To establish and implement policies and procedures, and periodically update those policies and procedures as required for the searching, retrieving and furnishing of student records pursuant to Chapter 6.5 of Part 27, Division 4, Title 1 of the Education Code.

B) Pursuant to Education Code Section 49062, establishing, maintaining and destroying pupil records, including health records, according to regulations adopted by the State Board of Education.

C) Pursuant to Education Code Section 49065, the furnishing of (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils, and (3) for searching and retrieving pupil records when transcripts or verifications are requested.

D) Pursuant to Education Code Section 49067, subdivision (a), conferencing with, or providing a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. Pursuant to subdivision (b), adopting and implementing regulations, when assigning a failing grade based upon excess absences, which include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused

absences.

E) Pursuant to Education Code Section 49068, whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, transferring the pupil's permanent record or a copy thereof upon receipt of a request from the district or private school where the pupil intends to enroll. For any school district requesting such a transfer of a record, notifying the parent of his or her right to receive a copy of the record and a right to a hearing to challenge the content of the record.

F) Pursuant to Education Code Section 49069.3, allowing access to records of grades and transcripts, and any individualized education plans (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 maintained by school districts of those pupils to Foster family agencies with jurisdiction over currently enrolled or former pupils.

G) Pursuant to Education Code Section 49069.5, subdivision (b), cooperating with the county social service or probation department, a regional center for the developmentally disabled, or other placing agency to ensure that the education record of a pupil in foster care is transferred to the receiving local education agency in an expedited manner upon the request of those agencies. Pursuant to subdivision (d), the information provided shall include, but not be limited to, the following: (1) The location of the pupil's records, (2) the last school and teacher of the pupil, (3) the pupil's current grade level, and (4) any information deemed

necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

H) Pursuant to Education Code Section 49076.5, releasing information specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

I) Pursuant Pursuant to Education Code Section 49077, making a reasonable effort

to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

J) Pursuant to Education Code Section 49078, upon service of a lawfully issued subpoena or a court order solely for the purpose of producing records of a pupil, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office.

II. COMMUNITY COLLEGES

K) To establish and implement policies and procedures, and periodically update those policies and procedures, for the searching, retrieving and furnishing student records pursuant to Chapter 1.5 of Part 47, Division 7 of Title 3 of the Education Code.

L) Pursuant to Education Code Section 76220, establishing, maintaining, and destroying student records according to regulations adopted by the Board of Governors of the California Community Colleges.

M) Pursuant to Education Code Section 76223, providing, free of charge, (1) up to two transcripts of students' records or (2) up to two verifications of various records of students; and for searching or retrieving any student records when

transcripts or verifications are required.

N) Pursuant to Education Code Section 76225, whenever a student transfers from one community college to another, or to a public or private institution of postsecondary education within the state, transferring appropriate records or copies and notifying the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record.

O) Pursuant to Education Code Section 76234, whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, or any conduct that threatens the health and safety of the alleged victim, informing the alleged victim of the results of any disciplinary action by the community college and the results of any appeal.

P) Pursuant to Education Code Section 76244, making a reasonable effort to notify a student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

Q) Pursuant to Education Code Section 76245, upon service of a lawfully issued subpoena or a court order solely to produce a school record regarding any student, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or

court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office.

R) Pursuant to Education Code Section 76246, complying with appropriate rules and regulations adopted by the Board of Governors of the California Community Colleges to insure the orderly implementation of this chapter.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[37] statutory exceptions to a finding

[37] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state

of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code sections, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[38]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of Bill Hendrick, PhD

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mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

[38] Government Code section 17565, added by Chapter 879, Statutes of 1986:

"If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Director, Pupil Services Department
Riverside Unified School District

Declaration of Herman C. Lee
Palomar Community College District

Exhibit 2: Copies of Statutes Cited

Chapter 67, Statutes of 2000

Chapter 846, Statute of 1998

Chapter 311, Statutes of 1998

Chapter 879, Statutes of 1996

Chapter 758, Statutes of 1995

Chapter 561, Statutes of 1993

Chapter 593, Statutes of 1989

Chapter 498, Statutes of 1983

Chapter 1347, Statutes of 1980

Chapter 1297, Statutes of 1976

Chapter 816, Statutes of 1975

Exhibit 3: Copies of Code Sections Cited

Education Code Section 49062

Education Code Section 49065

Education Code Section 49067

Education Code Section 49068

Education Code Section 49069.3

Education Code Section 49069.5

Education Code Section 49076.5

Education Code Section 49077

Education Code Section 49078

Education Code Section 76220

Education Code Section 76223

Education Code Section 76225

Education Code Section 76234

Education Code Section 76244

Education Code Section 76245

Education Code Section 76246

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 13, 2003, at Riverside, California by:

Michael H. Fine
Deputy Superintendent
Business Services & Governmental Relations Division

Voice: (909) 788-1020
Fax: (909) 276-2024

PART VI. APPOINTMENT OF REPRESENTATIVE

Riverside Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Michael H. Fine
Deputy Superintendent
Business Services & Governmental Relations Division

6/13/03
Date

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 10, 2003, at San Marcos, California by:

Jerry R. Patton
Assistant Superintendent/Vice President
Finance and Administrative Services
Palomar Community College District

Voice: (760) 744-1150
Fax: (760) 744-8123

PART VI. APPOINTMENT OF REPRESENTATIVE

Palomar Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Jerry R. Patton
Assistant Superintendent/Vice President
Finance and Administrative Services
Palomar Community College District

6/10/03
Date

EXHIBIT 1
DECLARATIONS

DECLARATION OF BILL HENDRICK, PhD

Riverside Unified School District

Test Claim of Riverside Unified School District and
Palomar Community College District

COSM No. _____

Chapter 67, Statutes of 2000
Chapter 846, Statutes of 1998
Chapter 311, Statutes of 1998
Chapter 879, Statutes of 1996
Chapter 758, Statutes of 1995
Chapter 561, Statutes of 1993
Chapter 593, Statutes of 1989
Chapter 498, Statutes of 1983
Chapter 1347, Statutes of 1980
Chapter 1297, Statutes of 1976
Chapter 816, Statutes of 1975

Education Code Section 49062
Education Code Section 49065
Education Code Section 49067
Education Code Section 49068
Education Code Section 49069.3
Education Code Section 49069.5
Education Code Section 49076.5
Education Code Section 49077
Education Code Section 49078
Education Code Section 76220

Student Records

I, Bill Hendrick, Director Pupil Services Department, Riverside Unified School District , make the following declaration and statement.

In my capacity as Director, Pupil Services Department, I am responsible for the searching and retrieving, furnishing and forwarding of student records. I am familiar with the provisions and requirements of the statutes and Education Code Sections

enumerated above.

These Education Code sections require the Riverside Unified School District to:

A) To establish and implement policies and procedures, and periodically update those policies and procedures as required for the searching, retrieving and furnishing of student records pursuant to Chapter 6.5 of Part 27, Division 4, Title 1 of the Education Code.

B) Pursuant to Education Code Section 49062, establishing, maintaining and destroying pupil records, including health records, according to regulations adopted by the State Board of Education.

C) Pursuant to Education Code Section 49065, the furnishing of (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils, and (3) for searching and retrieving pupil records when transcripts or verifications are requested.

D) Pursuant to Education Code Section 49067, subdivision (a), conferencing with, or providing a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. Pursuant to subdivision (b), adopting and implementing regulations, when assigning a failing grade based upon excess absences, which include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

E) Pursuant to Education Code Section 49068, whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, transferring the pupil's permanent record or a copy thereof upon receipt of a request from the district or private school where the pupil intends to enroll. For any school district requesting such a transfer of a record, notifying the parent of his or her right to receive a copy of the record and a right to a hearing to challenge the content of the record.

F) Pursuant to Education Code Section 49069.3, allowing access to records of grades and transcripts, and any individualized education plans (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 maintained by school districts of those pupils to Foster family agencies with jurisdiction over currently enrolled or former pupils.

G) Pursuant to Education Code Section 49069.5, subdivision (b), cooperating with the county social service or probation department, a regional center for the developmentally disabled, or other placing agency to ensure that the education record of a pupil in foster care is transferred to the receiving local education agency in an expedited manner upon the request of those agencies. Pursuant to subdivision (d), the information provided shall include, but not be limited to, the

following: (1) The location of the pupil's records, (2) the last school and teacher of the pupil, (3) the pupil's current grade level, and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

H) Pursuant to Education Code Section 49076.5, releasing information specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers

authorized to request pupil record information.

I) Pursuant Pursuant to Education Code Section 49077, making a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

J) Pursuant to Education Code Section 49078, upon service of a lawfully issued subpoena or a court order solely for the purpose of producing records of a pupil, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office.

It is estimated that the Riverside Unified School District incurred more than $1,000 in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the

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foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 13 day of June, 2003, at Riverside, California.

Bill Hendrick, Director
Pupil Services Department
Riverside Unified School District

DECLARATION OF HERMAN C. LEE

Palomar Community College District

Test Claim of Riverside Unified School District and
Palomar Community College District

COSM No. _____

Chapter 67, Statutes of 2000
Chapter 846, Statutes of 1998
Chapter 311, Statutes of 1998
Chapter 879, Statutes of 1996
Chapter 758, Statutes of 1995
Chapter 561, Statutes of 1993
Chapter 593, Statutes of 1989
Chapter 498, Statutes of 1983
Chapter 1347, Statutes of 1980
Chapter 1297, Statutes of 1976
Chapter 816, Statutes of 1975

Education Code Section 76220
Education Code Section 76223
Education Code Section 76225
Education Code Section 76234
Education Code Section 76244
Education Code Section 76245
Education Code Section 76246

Student Records

I, Herman C. Lee, Director, Enrollment Services, Palomar Community College District, make the following declaration and statement.

In my capacity as Director of Enrollment Services, I am responsible for the searching and retrieving, furnishing and forwarding of student records. I am familiar with the provisions and requirements of the statutes and Education Code Sections enumerated above.

These Education Code sections require the Palomar Community College District

to:

A) To establish and implement policies and procedures, and periodically update those policies and procedures, for the searching, retrieving and furnishing student records pursuant to Chapter 1.5 of Part 47, Division 7 of Title 3 of the Education Code.

B) Pursuant to Education Code Section 76220, establishing, maintaining, and destroying student records according to regulations adopted by the Board of Governors of the California Community Colleges.

C) Pursuant to Education Code Section 76223, providing, free of charge, (1) up to two transcripts of students' records or (2) up to two verifications of various records of students; and for searching or retrieving any student records when transcripts or verifications are required.

D) Pursuant to Education Code Section 76225, whenever a student transfers from one community college to another, or to a public or private institution of postsecondary education within the state, transferring appropriate records or copies and notifying the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record.

F) Pursuant to Education Code Section 76234, whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, or any conduct that threatens the health and safety of the alleged victim,

informing the alleged victim of the results of any disciplinary action by the community college and the results of any appeal.

G) Pursuant to Education Code Section 76244, making a reasonable effort to notify a student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

H) Pursuant to Education Code Section 76245, upon service of a lawfully issued subpoena or a court order solely to produce a school record regarding any student, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office.

I) Pursuant to Education Code Section 76246, complying with appropriate rules and regulations adopted by the Board of Governors of the California Community Colleges to insure the orderly implementation of this chapter.

It is estimated that the Palomar Community College District incurred more than $1,000 in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed

by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 10 day of June, 2003, at San Marcos, California.

Herman C. Lee
Director, Enrollment Services

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 816

An act to amend Section 967 of, to add Chapter 1.5 (commencing with Section 10931) to Division 9 of, and Chapter 1.5 (commencing with Section 25430) to Division 18.5 of, to repeal Sections 1037, 22504.5, and 25422.8 of, and to repeal Article 6 (commencing with Section 10751) of Chapter 1 of Division 9 of, the Education Code, relating to pupil records.

[Approved by Governor September 17, 1975. Filed with Secretary of State September 17, 1975.]

The people of the State of California do enact as follows:

SECTION 1. Section 967 of the Education Code is amended to read:

967. Notwithstanding the provisions of Section 966 of this code and Section 54950 of the Government Code, the governing body of a school district shall, unless a request by the parent has been made pursuant to this section, hold executive sessions to consider the expulsion, suspension, or disciplinary action or any other action in connection with any pupil of the school district, if a public hearing upon such question would lead to the giving out of information concerning school pupils which would be in violation of Sections 10944 and 10947.

Before calling such executive session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such executive session. Unless the pupil, or his parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters may be conducted by the governing board in executive session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public. Whether the matter is considered at an executive session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

SEC. 1.5. Section 967 of the Education Code is amended to read:

967. Notwithstanding the provisions of Section 966 of this code and Section 54950 of the Government Code, the governing body of a school district shall, unless a request by the parent has been made pursuant to this section, hold executive sessions if the board is considering the suspension of, or disciplinary action or any other action except expulsion in connection with any pupil of the school district, if a public hearing upon such question would lead to the

CHAPTER 816

An act to amend Section 967 of, to add Chapter 1.5 (commencing with Section 10931) to Division 9 of, and Chapter 1.5 (commencing with Section 25430) to Division 18.5 of, to repeal Sections 1037, 22504.5, and 25422.8 of, and to repeal Article 6 (commencing with Section 10751) of Chapter 1 of Division 9 of, the Education Code, relating to pupil records.

[Approved by Governor September 17, 1975. Filed with Secretary of State September 17, 1975.]

The people of the State of California do enact as follows:

SECTION 1. Section 967 of the Education Code is amended to read:

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Before calling such executive session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such executive session. Unless the pupil, or his parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters may be conducted by the governing board in executive session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public. Whether the matter is considered at an executive session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

SEC. 1.5. Section 967 of the Education Code is amended to read:

967. Notwithstanding the provisions of Section 966 of this code and Section 54950 of the Government Code, the governing body of a school district shall, unless a request by the parent has been made pursuant to this section, hold executive sessions if the board is considering the suspension of, or disciplinary action or any other action except expulsion in connection with any pupil of the school district, if a public hearing upon such question would lead to the

giving out of information concerning school pupils which would be in violation of Section 10751 or Sections 10944 and 10947.

Before calling such executive session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such executive session. Unless the pupil, or his parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters shall be conducted by the governing board in executive session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at such meeting that might be in conflict with the right to privacy of any pupil other than the pupil requesting the public meeting or on behalf of whom such meeting is requested, shall be in executive session. Whether the matter is considered at an executive session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

SEC. 2. Section 1037 of the Education Code is repealed.

SEC. 3. Article 6 (commencing with Section 10751) of Chapter 1 of Division 9 of the Education Code is repealed.

SEC. 4. Chapter 1.5 (commencing with Section 10931) is added to Division 9 of the Education Code, to read:

CHAPTER 1.5. PUPIL RECORDS

Article 1. Legislative Intent

10931. It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 regarding parental access to, and the confidentiality of, pupil records in order to insure the continuance of federal education funds to public educational institutions within the state, and to revise generally and update the law relating to such records.

This chapter shall have no effect regarding public community colleges, other public or private institutions of higher education, other governmental or private agencies which receive federal education funds unless described herein, or, except for Sections 10939 and 10940 and subdivision (b) (5) of Section 10947, private schools.

The provisions of this chapter shall prevail over the provisions of Section 554 of this code and Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code to the extent that they may pertain to access to pupil records.

Article 2. Definitions

10932. As used in this chapter:

(a) "Parent" means a natural parent, an adopted parent, or legal guardian. If parents are divorced or legally separated, only the parent having legal custody of the pupil may consent to release records to others pursuant to Section 10946, provided, however, that either parent may grant consent if both parents have notified, in writing, the school or school district that such an agreement has been made. Whenever a pupil has attained the age of 18 years or is attending an institution of postsecondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the pupil shall thereafter only be required of, and accorded to, the pupil.

(b) "Pupil record" means any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by any employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Pupil record" shall not include informal notes related to a pupil compiled by a school officer or employee which remains in the sole possession of the maker and is not accessible or revealed to any other person.

(c) "Directory information" means one or more of the following items: student's name, address, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the student.

(d) "School district" means any school district maintaining any of grades kindergarten through 12, any public school providing instruction in any of grades kindergarten through 12, the office of the county superintendent of schools, or any special school operated by the Department of Education.

(e) "Access" means a personal inspection and review of a record or an accurate copy of a record, or an oral description or communication of a record or an accurate copy of a record, or a request to release a copy of any record.

Article 3. General Provisions

10933. School districts shall establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. Such regulations shall establish state policy as to what items of information shall be placed into pupil records and what information is appropriate to be compiled by individual school officers or employees under the exception to pupil records provided in subdivision (b) of Section 10932. No pupil records shall be destroyed except pursuant to such regulations or as provided in

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subdivisions (b) and (c) of Section 10941.

10934. School districts shall notify parents of their rights under this chapter upon the date of the pupil's initial enrollment, and thereafter at the same time as notice is issued pursuant to Section 10921. The notice shall be, insofar as is practicable, in the home language of the pupil. The notice shall take a form which reasonably notifies parents of the availability of the following specific information:

(a) The types of pupil records and information contained therein which are directly related to students and maintained by the institution.

(b) The name and position of the official responsible for the maintenance of each type of record, the persons who have access to those records, and the purposes for which they have such access.

(c) The policies of the institution for reviewing and expunging those records.

(d) The right of the parent to access to pupil records.

(e) The procedures for challenging the content of pupil records.

(f) The cost if any which will be charged to the parent for reproducing copies of records.

(g) The categories of information which the institution has designated as directory information pursuant to Section 10944 and the parties to whom such information will be released unless the parent objects.

(h) Any other rights and requirements set forth in this chapter.

10935. A log or record shall be maintained for each pupil's record which lists all persons or organizations requesting or receiving information from the record excepting school personnel and the reasons therefor. The log shall be open to inspection only by a parent and the school official or his designee responsible for the maintenance of pupil records.

10936. Any school district may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils.

10937. (a) When grades are given for any course of instruction taught in a school district, the grade given to each pupil shall be the grade determined by the teacher of the course and the determination of the pupil's grade by the teacher, in the absence of mistake, fraud, bad faith, or incompetency, shall be final.

(b) No grade of a pupil participating in a physical education class, however, may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil.

10938. The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written

report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

Notwithstanding the provisions of subdivision (a) of Section 10932, the provisions of this section shall apply to the parent of any pupil without regard to the age of the pupil.

10939. Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent enrollment and scholarship record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. The State Board of Education is hereby authorized to adopt rules and regulations concerning the transfer of records.

Article 4. Rights of Parents

10940. Parents of currently enrolled or former pupils have an absolute right to access to any and all pupil records related to their children which are maintained by school districts or private schools. The editing or withholding of any such records is prohibited.

Each school district shall adopt procedures for the granting of requests by parents to inspect and review records during regular school hours, provided that access shall be granted no later than five days following the date of the request. Procedures shall include the notification to the parent of the location of all official pupil records if not centrally located and the providing of qualified certificated personnel to interpret records where appropriate.

10941. Following an inspection and review of a pupil's records, the parent of a pupil or former pupil of a school district may challenge the content of any pupil record.

(a) The parent of a pupil may file a written request with the superintendent of the district to remove any information recorded in the written records concerning his child which he alleges to be: (1) inaccurate, (2) an unsubstantiated personal conclusion or inference, (3) a conclusion or inference outside of the observer's area of competence, or (4) not based on the personal observation of a named person with the time and place of the observation noted.

(b) Within 30 days of receipt of such request, the superintendent or his designee shall meet with the parent and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the school district. The superintendent shall then sustain or deny the allegations.

If the superintendent sustains the allegations, he shall order the

removal and destruction of the information.

If the superintendent denies the allegations and refuses to order the removal of the information, the parent may, within 30 days of the refusal, appeal the decision in writing to the governing board of the school district.

(c) Within 30 days of receipt of such an appeal, the governing board shall, in closed session with the parent and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the school district, determine whether or not to sustain or deny the allegations.

If the governing board sustains the allegations, it shall order the superintendent to immediately remove and destroy the information from the written records of the pupil.

The decision of the governing board shall be final.

Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board, unless the parent initiates legal proceedings relative to the disputed information within the prescribed period.

(d) If the final decision of the governing board is unfavorable to the parent, or if the parent accepts an unfavorable decision by the district superintendent, the parent shall have the right to submit a written statement of his objections to the information. This statement shall become a part of the pupil's school record until such time as the information objected to is removed.

10942. (a) To assist in making determinations pursuant to Section 10941, a district superintendent or governing board may convene a hearing panel composed of the following persons, provided that the parent has given written consent to release information from the relevant pupil's records to the members of the panel so convened:

(1) The principal of a public school other than the public school at which the record is on file.

(2) A certificated employee appointed by the chairman of the certificated employee council of the district, or, if no such council exists, a certificated employee appointed by the parent.

(3) A parent appointed by the superintendent or by the governing board of the district, depending upon who convenes the panel.

(b) The persons appointed pursuant to paragraphs (2) and (3) of subdivision (a) shall, if possible, not be acquainted with the pupil, his parent or guardian, or the certificated employee who recorded the information, except when the parent or guardian appoints the person pursuant to paragraph (2).

(c) The principal appointed to the hearing panel shall serve as its chairman.

(d) The hearing panel shall, in closed session, hear the objections to the information of the parent and the testimony of the certificated employee who recorded the information in question, if any, and if

such employee is presently employed by the school district.

The hearing panel shall be provided with verbatim copies of the information which is the subject of the controversy.

Written findings shall be made setting forth the facts and decisions of the panel, and such findings shall be forwarded to the superintendent or the governing board, depending upon who convened the panel.

The proceedings of the hearing shall not be disclosed or discussed by panel members except in their official capacities.

10943. Whenever there is included in any pupil record information concerning any disciplinary action taken by school district personnel in connection with the pupil, the school district maintaining such record or records shall allow the pupil's parent to include in such pupil record a written statement or response concerning the disciplinary action.

Article 5. Privacy of Pupil Records

10944. School districts shall adopt a policy identifying those categories of directory information as defined in subdivision (c) of Section 10932 which may be released. The district shall determine which officials or organizations may receive directory information, provided, however, that no information may be released to a private profitmaking entity other than employers, prospective employers and representatives of the news media, including, but not limited to, newspapers, magazines, and radio and television stations. The names and addresses of pupils enrolled in grade 12 or who have terminated enrollment prior to graduation may be provided to a private school or college operating under the provisions of Division 21; provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution, and provided further that any violation of this provision is a misdemeanor, punishable by a fine of not to exceed two thousand five hundred dollars ($2,500), and, in addition, the privilege of the school or college to receive such information shall be suspended for a period of two years from the time of discovery of the misuse of such information. Any district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of pupils.

Directory information may be released according to local policy as to any pupil or former pupil, provided that notice is given at least on an annual basis of the categories of information which the school plans to release and of the recipients. No directory information shall be released regarding any pupil when a parent has notified the school district that such information shall not be released.

10945. Nothing in this chapter shall preclude a school district from providing, in its discretion, statistical data from which no pupil may be identified to any public agency or entity or private nonprofit

college, university, or educational research and development organization when such actions would be in the best educational interests of pupils.

10946. A school district may permit access to pupil records to any person for whom a parent of the pupil has executed written consent specifying the records to be released and identifying the party to whom the records may be released. The recipient must be notified that the transmission of the information to others is prohibited. The consent notice shall be permanently kept with the record file.

10947. A school district is not authorized to permit access to pupil records to any person without written parental consent or under judicial order except that:

(a) Access shall be permitted to the following:

(1) School officials and employees of the district and members of a school attendance review board appointed pursuant to Section 12501, provided that any such person has a legitimate educational interest to inspect a record.

(2) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided, where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 10939.

(3) Federal education officials, the United States Office for Civil Rights, the Superintendent of Public Instruction, or the county superintendent of schools, or their respective designees, where such information is necessary to audit or evaluate a state or federally funded program or pursuant to a federal or state law.

(4) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law.

(5) Parents of an 18-year-old pupil who is a dependent as defined in Section 152 of the Internal Revenue Code of 1954.

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

(b) School districts may release information from education records to the following:

(1) Appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other persons.

(2) Agencies or organizations in connection with a student's application for, or receipt of, financial aid.

(3) Accrediting associations.

(4) 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, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students or their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is

conducted.

(5) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 10939. Such information shall be in addition to the pupil's permanent enrollment and scholarship record transferred pursuant to Section 10939.

No person, persons, agency, or organization permitted access to pupil records pursuant to this section shall permit access to any information obtained from such records by any other person, persons, agency, or organization without the written consent of the pupil's parent; provided, however, that this paragraph shall not be construed as to require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as such persons have an equal legitimate interest in the information.

10948. Information concerning a student shall be furnished in compliance with a court order. The parent and the pupil shall be notified in advance of such compliance by the school employee who complies and releases the information if lawfully possible within the requirements of the judicial order.

10949. The service of a subpoena upon a public school employee solely for the purpose of causing him to produce a school record pertaining to any pupil may be complied with by such employee, in lieu of personal appearance as a witness in the proceeding, by submitting to the court, or other agency issuing the subpoena, at the time and place required by the subpoena, a copy of such record, accompanied by an affidavit certifying that such copy is a true copy of the original record on file in the school or school office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

SEC. 5. Section 22504.5 of the Education Code is repealed.

SEC. 6. Section 25422.8 of the Education Code is repealed.

SEC. 7. Chapter 1.5 (commencing with Section 25430) is added to Division 18.5 of the Education Code, to read:

CHAPTER 1.5. STUDENT RECORDS

Article 1. Legislative Intent

25430. It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 regarding the confidentiality of student records in order to insure the continuance of federal education funds to public community colleges within the state, and to revise generally and update the law relating to such records.

Article 2. Definitions

25430.1. As used in this chapter:

(a) "Student record" means any item of information directly related to an identifiable student, other than directory information, which is maintained by a community college or required to be maintained by any employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Student record" shall not mean information provided by a student's parents relating to applications for financial aid or scholarships, nor shall it mean information related to a student compiled by a community college officer or employee which remains in the sole possession of the maker and is not accessible or revealed to any other person, including information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment; provided, however, that such records may be personally reviewed by a physician or other appropriate professional of the student's choice.

(b) "Student record" shall not mean information maintained by a law enforcement unit if the personnel of the unit do not have access to student records pursuant to Section 25430.15, if the information maintained by the unit is kept apart from information maintained pursuant to subdivision (a) of this section, if the information is maintained solely for law enforcement purposes, and if the information is not made available to persons other than law enforcement officials of the same jurisdiction.

(c) "Directory information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

(d) "Access" means a personal inspection and review of a record or an accurate copy of a record, or an oral description or communication of a record or an accurate copy of a record, or a request to release a copy of any record.

Article 3. General Provisions

25430.2. Community college districts shall establish, maintain, and destroy student records according to regulations adopted by the Board of Governors of the California Community Colleges. Such

regulations shall establish state policy as to what items of information shall be placed into student records and what information is appropriate to be compiled by individual community college officers or employees under the exception to student records provided in subdivisions (a) and (b) of Section 25430.1. No student records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 25430.10.

25430.3. Community college districts shall notify students of their rights under this chapter upon the date of the student's enrollment next following its effective date, and at least annually thereafter. The notice shall be, insofar as is practicable, in the home language of the student. The notice shall take a form which reasonably notifies students of the availability of the following specific information:

(a) The types of student records and information contained therein which are directly related to students and maintained by the institution.

(b) The official responsible for the maintenance of each type of record, the persons who have access to those records, and the purposes for which they have such access.

(c) The policies of the institution for reviewing and expunging those records.

(d) The right of the student to access to his records.

(e) The procedures for challenging the content of student records.

(f) The cost if any which will be charged for reproducing copies of records.

(g) The categories of information which the institution has designated as directory information pursuant to Section 25430.12 and the parties to whom such information will be released unless the student objects.

(h) Any other rights and requirements set forth in this chapter.

25430.4. A log or record shall be maintained for each student's record which lists all persons or organizations requesting or receiving information from the record excepting school personnel and the reasons therefor. The log shall be open to inspection only by the student and the community college official or his designee responsible for the maintenance of student records.

25430.5. Any community college may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former students' records or (2) up to two verifications of various records of former students.

25430.6. (a) When grades are given for any course of instruction taught in a community college district, the grade given to each student shall be the grade determined by the instructor of the course and the determination of the student's grade by the instructor, in the absence of mistake, fraud, bad faith, or incompetency, shall be final.

(b) No grade of a student participating in a physical education class, however, may be adversely affected due to the fact that the

student does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the student.

25430.7. Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, college or university, or school or school district upon a request from the community college, college or university, or school or school district where the student intends to enroll; provided, however, that the community college, college or university, or school or school district from which the student is transferring may notify the community college, college or university, or school or school district making such a request that the student's records will be transferred upon payment by the student of all fees and charges due the community college, college or university, or school or school district. Any community college, college or university, or school or school district making such a transfer of such records shall notify the student of his right to receive a copy of the record and his right to a hearing to challenge the content of the record.

The Board of Governors of the California Community Colleges may adopt rules and regulations concerning transfer of such records to, from, or between schools under its jurisdiction.

Article 4. Rights of Students

25430.8. Any currently enrolled or former student has a right to access to any and all student records relating to him maintained by community colleges. The editing or withholding of any such records is prohibited.

Each community college district shall adopt procedures for the granting of requests by students to inspect and review records during regular school hours, provided that access shall be granted no later than five days following the date of the request. Procedures shall include notification of the location of all official student records if not centrally located and the providing of qualified personnel to interpret records where appropriate.

25430.9. A student may be requested to waive his right to access to student records devoted solely to confidential recommendations for career placement or postsecondary admission, provided that the student shall be notified, upon request, of the names of all persons making confidential recommendations. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from a community college.

25430.10. (a) Any student may file a written request with the chief administrative officer of a community college district to remove information recorded in his student records which he alleges to be: (1) inaccurate; (2) an unsubstantiated personal conclusion or

inference; (3) a conclusion or inference outside of the observer's area of competence; or (4) not based on the personal observation of a named person with the time and place of the observation noted.

(b) Within 30 days of receipt of such request, the chief administrative officer or his designee shall meet with the student and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the community college district. The chief administrative officer shall then sustain or deny the allegations.

If the chief administrative officer sustains the allegations, he shall order the removal and destruction of the information.

If the chief administrative officer denies the allegations and refuses to order the removal of the information, the student may, within 30 days of the refusal, appeal the decision in writing to the governing board of the community college district.

(c) Within 30 days of receipt of such an appeal, the governing board shall, in closed session with the student and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the community college district, determine whether to sustain or deny the allegations.

If the governing board sustains the allegations, it shall order the chief administrative officer to immediately remove and destroy the information.

The decision of the governing board shall be final.

Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board, unless the student initiates legal proceedings relative to the disputed information within the prescribed period.

(d) If the final decision of the governing board is unfavorable to the student, or if the student accepts an unfavorable decision by the chief administrative officer, the student shall have the right to submit a written statement of his objections to the information. This statement shall become a part of the student's record until such time as the information objected to is removed.

25430.11. Whenever there is included in any student record information concerning any disciplinary action taken by community college personnel in connection with the student, the student shall be allowed to include in such record a written statement or response concerning the disciplinary action.

Article 5. Privacy of Student Records

25430.12. Community college districts shall adopt a policy identifying those categories of directory information as defined in subdivision (c) of Section 25430.1 which may be released. The district shall determine which officials or organizations may receive directory information, provided, however, that no information may be released to a private profitmaking entity other than prospective

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employers and representatives of the news media, including, but not limited to, newspapers, magazines, and radio and television stations. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 21, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution, and provided further that any violations of this provision is a misdemeanor, punishable by a fine of not to exceed two thousand five hundred dollars ($2,500), and, in addition, the privilege of the school or college to receive such information shall be suspended for a period of two years from the time of discovery of the misuse of such information.

Any community college district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students.

Directory information may be released according to local policy as to any student currently attending the community college, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. No directory information shall be released regarding any student when the student has notified the school that such information shall not be released.

25430.13. Nothing in this chapter shall preclude a community college from providing, in its discretion, statistical data from which no student may be identified to any public agency or entity or private nonprofit college, university, or educational research and development organization when such actions would be in the best educational interests of students.

25430.14. A community college district may permit access to student records to any person for whom the student has executed written consent specifying the records to be released and identifying the party to whom the records may be released. The recipient must be notified that the transmission of the information to others is prohibited. The consent notice shall be permanently kept with the record file.

25430.15. A community college or community college district is not authorized to permit access to student records to any person without the written consent of the student or under judicial order except that:

(a) Access shall be permitted to the following:

(1) Officials and employees of the college or district, provided that any such person has a legitimate educational interest to inspect a record.

(2) Federal or state education officials or the county superintendent of education, or their respective designees, or the United States Office for Civil Rights, where such information is necessary to audit or evaluate a state or federally funded program or

pursuant to a federal or state law.

(3) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law.

(4) Parents of a student who is a dependent as defined in Section 152 of the Internal Revenue Code of 1954.

(b) Access may be permitted to the following:

(1) Appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other persons.

(2) Officials and employees of other public or private schools or school systems, including local, county, or state correctional facilities where educational programs are provided, where the student has been enrolled, intends to enroll, or is directed to enroll, subject to the rights of students as provided in Section 25430.7 of this code.

(3) Agencies or organizations in connection with a student's application for, or receipt of, financial aid.

(4) Accrediting associations carrying out accrediting functions.

(5) 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, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students or their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted.

No person, persons, agency or organization permitted access to student records pursuant to this section shall permit access to any information obtained from such records by any other person, persons, agency, or organization without the written consent of the student; provided, however, that this paragraph shall not be construed as to require prior student consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as such persons have an equal legitimate interest in the information.

25430.16. Information concerning a student shall be furnished in compliance with a court order. The student shall be notified in advance of such compliance by the college employee who complies and releases the information if lawfully possible within the requirements of the judicial order.

25430.17. The service of a subpoena upon a community college employee solely for the purpose of causing him to produce a school record pertaining to any student may be complied with by such employee, in lieu of personal appearance as a witness in the proceeding, by submitting to the court, or other agency issuing the subpoena, at the time and place required by the subpoena, a copy of such record, accompanied by an affidavit certifying that such copy is a true copy of the original record on file in the community college

or community college office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

25430.18. The Board of Governors of the California Community Colleges shall adopt appropriate rules and regulations to insure the orderly implementation of this chapter. A community college district governing board may adopt rules and regulations which are not inconsistent with this chapter or with those adopted by the board of governors in order to ensure the orderly implementation of this chapter.

SEC. 7.5. It is the intent of the Legislature, if this bill and Assembly Bill No. 1770 are both chaptered and become effective January 1, 1976, both bills amend Section 967 of the Education Code, and this bill is chaptered after Assembly Bill No. 1770, that the amendments to Section 967 proposed by both bills be given effect and incorporated in Section 967 in the form set forth in Section 1.5 of this act. Therefore, Section 1.5 of this act shall become operative only if this bill and Assembly Bill No. 1770 are both chaptered and become effective January 1, 1976, both amend Section 967, and this bill is chaptered after Assembly Bill No. 1770, in which case Section 1 of this act shall not become operative.

SEC. 8. There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because this act merely affirms for the state that which has been declared existing law or regulation through action by the federal government.

CHAPTER 1297

An act to amend Sections 10932, 10934, 10936, 10939, 10940, 10941, 10946, 10947, 10948, 25430.1, 25430.3, 25430.5, 25430.7, 25430.8, 25430.9, 25430.10, 25430.12, 25430.14, 25430.15, and 25430.16 of, to repeal and add Sections 10935 and 25430.4 to, and to add Chapter 1.2 (commencing with Section 22509) to Division 16.5 of the Education Code, relating to student records.

[Approved by Governor September 28, 1976. Filed with Secretary of State September 29, 1976.]

The people of the State of California do enact as follows:

SECTION 1. Section 10932 of the Education Code is amended to read:

10932. As used in this chapter:

(a) "Parent" means a natural parent, an adoptive parent, or legal guardian. If parents are divorced or legally separated, only the

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parent having legal custody of the pupil may challenge the content of a record pursuant to Section 10941, offer a written response to a record pursuant to Section 10943, or consent to release records to others pursuant to Section 10946, provided, however, that either parent may grant consent if both parents have notified, in writing, the school or school district that such an agreement has been made. Whenever a pupil has attained the age of 18 years or is attending an institution of postsecondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the pupil shall thereafter only be required of, and accorded to, the pupil.

(b) "Pupil record" means any item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by any employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Pupil record" shall not include informal notes related to a pupil compiled by a school officer or employee which remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. For purposes of this subdivision, "substitute" means a person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

(c) "Directory information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the student.

(d) "School district" means any school district maintaining any of grades kindergarten through 12, any public school providing instruction in any of grades kindergarten through 12, the office of the county superintendent of schools, or any special school operated by the Department of Education.

(e) "Access" means a personal inspection and review of a record or an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record.

SEC. 2. Section 10934 of the Education Code is amended to read:

10934. School districts shall notify parents in writing of their rights under this chapter upon the date of the pupil's initial enrollment, and thereafter at the same time as notice is issued pursuant to Section 10921. The notice shall be, insofar as is practicable, in the home language of the pupil. The notice shall take a form which reasonably notifies parents of the availability of the following specific information:

(a) The types of pupil records and information contained therein which are directly related to students and maintained by the institution.

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(b) The position of the official responsible for the maintenance of each type of record.

(c) The location of the log or record required to be maintained pursuant to Section 10935.

(d) The criteria to be used by the district in defining "school officials and employees" and in determining "legitimate educational interest" as used in Section 10935 and paragraph (1) of subdivision (a) of Section 10947.

(e) The policies of the institution for reviewing and expunging those records.

(f) The right of the parent to access to pupil records.

(g) The procedures for challenging the content of pupil records.

(h) The cost, if any, which will be charged to the parent for reproducing copies of records.

(i) The categories of information which the institution has designated as directory information pursuant to Section 10944.

(j) Any other rights and requirements set forth in this chapter, and the right of the parent to file a complaint with the United States Department of Health, Education, and Welfare concerning an alleged failure by the district to comply with the provisions of Section 438 of the General Education Provisions Act (20 U.S.C.A. Sec. 1232g).

SEC. 3. Section 10935 of the Education Code is repealed.

SEC. 4. Section 10935 is added to the Education Code, to read:

10935. A log or record shall be maintained for each pupil's record which lists all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interests therefor. Such listing need not include:

(a) Parents or pupils to whom access is granted pursuant to Section 10940 or paragraph (6) of subdivision (a) of Section 10947;

(b) Parties to whom directory information is released pursuant to Section 10944;

(c) Parties for whom written consent has been executed by the parent pursuant to Section 10946; or

(d) School officials or employees having a legitimate educational interest pursuant to paragraph (1) of subdivision (a) of Section 10947.

The log or record shall be open to inspection only by a parent and the school official, or his designee, responsible for the maintenance of pupil records, and to other school officials with legitimate educational interests in the records, and to the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an administrative head of an education agency as defined in Public Law 93-380, and state educational authorities as a means of auditing the operation of the system.

SEC. 4.5. Section 10936 of the Education Code is amended to read:

10936. Any school district may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil

record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils. No charge may be made to search for or to retrieve any pupil record.

SEC. 5. Section 10939 of the Education Code is amended to read:

10939. Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. The State Board of Education is hereby authorized to adopt rules and regulations concerning the transfer of records.

SEC. 6. Section 10940 of the Education Code is amended to read:

10940. Parents of currently enrolled or former pupils have an absolute right to access to any and all pupil records related to their children which are maintained by school districts or private schools. The editing or withholding of any such records, except as provided for in this chapter, is prohibited.

Each school district shall adopt procedures for the granting of requests by parents to inspect and review records during regular school hours, provided that access shall be granted no later than five days following the date of the request. Procedures shall include the notification to the parent of the location of all official pupil records if not centrally located and the providing of qualified certificated personnel to interpret records where appropriate.

SEC. 7. Section 10941 of the Education Code is amended to read:

10941. Following an inspection and review of a pupil's records, the parent of a pupil or former pupil of a school district may challenge the content of any pupil record.

(a) The parent of a pupil may file a written request with the superintendent of the district to correct or remove any information recorded in the written records concerning his child which he alleges to be: (1) inaccurate, (2) an unsubstantiated personal conclusion or inference, (3) a conclusion or inference outside of the observer's area of competence, or (4) not based on the personal observation of a named person with the time and place of the observation noted.

(b) Within 30 days of receipt of such request, the superintendent or his designee shall meet with the parent and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the school district. The superintendent shall then sustain or deny the allegations.

If the superintendent sustains any or all of the allegations, he shall order the correction or the removal and destruction of the information.

If the superintendent denies any or all of the allegations and

refuses to order the correction or the removal of the information, the parent may, within 30 days of the refusal, appeal the decision in writing to the governing board of the school district.

(c) Within 30 days of receipt of such an appeal, the governing board shall, in closed session with the parent and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the school district, determine whether or not to sustain or deny the allegations.

If the governing board sustains any or all of the allegations, it shall order the superintendent to immediately correct or remove and destroy the information from the written records of the pupil.

The decision of the governing board shall be final.

Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board, unless the parent initiates legal proceedings relative to the disputed information within the prescribed period.

(d) If the final decision of the governing board is unfavorable to the parent, or if the parent accepts an unfavorable decision by the district superintendent, the parent shall have the right to submit a written statement of his objections to the information. This statement shall become a part of the pupil's school record until such time as the information objected to is corrected or removed.

SEC. 8. Section 10946 of the Education Code is amended to read:

10946. A school district may permit access to pupil records to any person for whom a parent of the pupil has executed written consent specifying the records to be released and identifying the party or class of parties to whom the records may be released. The recipient must be notified that the transmission of the information to others without the written consent of the parent is prohibited. The consent notice shall be permanently kept with the record file.

SEC. 9. Section 10947 of the Education Code is amended to read:

10947. A school district is not authorized to permit access to pupil records to any person without written parental consent or under judicial order except that:

(a) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(1) School officials and employees of the district and members of a school attendance review board appointed pursuant to Section 12501, provided that any such person has a legitimate educational interest to inspect a record.

(2) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided, where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 10939.

(3) Authorized representatives of the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an

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administrative head of an education agency, state education officials, or their respective designees, or the United States Office for Civil Rights, where such 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, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students or their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of federal legal requirements.

(4) 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.

(5) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of the Internal Revenue Code of 1954.

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

(b) School districts may release information from pupil records to the following:

(1) Appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other persons.

(2) Agencies or organizations in connection with a student's application for, or receipt of, financial aid; provided, that information permitting the personal identification of students or their parents may be disclosed only as may be necessary for such purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(3) Accrediting organizations in order to carry out their accrediting functions.

(4) 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, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students or their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted.

(5) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 10939. Such information shall be in addition to the pupil's permanent record transferred pursuant to Section 10939.

No person, persons, agency, or organization permitted access to

pupil records pursuant to this section shall permit access to any information obtained from such records by any other person, persons, agency, or organization without the written consent of the pupil's parent; provided, however, that this paragraph shall not be construed as to require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as such persons have a legitimate interest in the information.

SEC. 9.5. Section 10948 of the Education Code is amended to read:

10948. Information concerning a student shall be furnished in compliance with a court order. The school district shall make a reasonable effort to notify the parent and the pupil in advance of such compliance if lawfully possible within the requirements of the judicial order.

SEC. 10. Chapter 1.2 (commencing with Section 22509) is added to Division 16.5 of the Education Code, to read:

CHAPTER 1.2. STUDENT RECORDS

Article 1. Legislative Intent

22509. It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 regarding the confidentiality of student records in order to insure the continuance of federal education funds to institutions of postsecondary education within the state, and to revise generally and update the law relating to such records.

This chapter shall not apply to community colleges or community college students unless specifically provided for herein.

This chapter, except for Sections 22509.1, 22509.3, 22509.4, 22509.5, 22509.6, 22509.7, 22509.11, and 22509.14, shall not apply to private colleges or universities, or to any private educational institution operating pursuant to, or expressly excluded from the operation of, Division 21 (commencing with Section 29001).

Article 2. Definitions

22509.1. As used in this chapter:

(a) "Student record" means any item of information directly related to an identifiable student, other than directory information, which is maintained by a college or university or is required to be maintained by any employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm, or other means.

(b) "Student record" shall not mean information provided by a student's parents relating to applications for financial aid or scholarships, nor shall it mean confidential letters or statements of recommendation maintained by a college or university on or before

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January 1, 1975, provided that such letters or statements are not used for purposes other than those for which they were specifically intended, nor shall it mean information related to a student compiled by a college or university officer or employee which remains in the sole possession of the maker and is not accessible or revealed to any other person except a substitute. For purposes of this subdivision, "substitute" shall mean a person who performs the duties of the individual who made the notes on a temporary basis and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

"Student record" shall also not include information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which is created, maintained, or used only in connection with the provision of treatment to the student and is not available to anyone other than persons providing such treatment; provided, however, that such a record may be personally reviewed by a physician or other appropriate professional of the student's choice.

"Student record" shall also not mean information maintained by a college or university law enforcement unit if the personnel of the unit do not have access to student records pursuant to Section 22509.14, if the information maintained by the unit is kept apart from information maintained pursuant to subdivision (a) of this section, if the information is maintained solely for law enforcement purposes, and if the information is not made available to persons other than law enforcement officials of the same jurisdiction, nor shall it mean information maintained in the normal course of business pertaining to persons who are employed by a college or university, provided that such information relates exclusively to such person in that person's capacity as an employee and is not available for use for any other purpose.

(c) "Directory information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

(d) "Access" means a personal inspection and review of a record or an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record.

Article 3. General Provisions

22509.2. Colleges and universities may establish, maintain, and destroy student records according to regulations adopted by their governing boards.

22509.3. Colleges and universities shall notify students in writing of their rights under this chapter upon the date of the student's enrollment next following January 1, 1977, and at least annually thereafter.

The notice shall take a form which reasonably notifies students of the availability of the following specific information:

(a) The types of student records and information contained therein which are directly related to students and maintained by the institution.

(b) The official responsible for the maintenance of each type of record.

(c) The location of the log or record required to be maintained pursuant to Section 22509.4.

(d) The criteria to be used by the institution in defining "officials and employees" and in determining "legitimate educational interest" as used in Section 22509.4 and subdivision (a) of Section 22509.14.

(e) The policies of the institution for reviewing and expunging those records.

(f) The right of the student to access to his records.

(g) The procedures for challenging the content of student records.

(h) The cost, if any, which will be charged for reproducing copies of records.

(i) The categories of information which the institution has designated as directory information pursuant to Section 22509.11.

(j) Any other rights and requirements set forth in this chapter and the right of the student to file a complaint with the United States Department of Health, Education, and Welfare concerning an alleged failure by the institution to comply with the provisions of Section 438 of the General Education Provisions Act (20 U.S.C.A. Sec. 1232g).

22509.4. A log or record shall be maintained for each student's record which lists all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interests therefor. Such listing need not include:

(a) Students to whom access is granted pursuant to Section 22509.7;

(b) Parties to whom directory information is released pursuant to Section 22509.11;

(c) Parties for whom written consent has been executed by the student pursuant to Section 22509.13; or

(d) Officials or employees having a legitimate educational interest pursuant to subdivision (a) of Section 22509.14.

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The log or record shall be open to inspection only by the student and the college or university official or his designee responsible for the maintenance of student records, and to other school officials with legitimate educational interests in the records, and to the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an administrative head of an education agency as defined in Public Law 93-380, and state educational authorities as a means of auditing the operation of the system.

22509.5. Any college or university may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record; provided, however, that no charge may be made to search for or to retrieve any student record.

22509.6. Whenever a student transfers from one public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, college, or university upon a request from the student; provided, however, that the community college, college, or university from which the student is transferring may notify the student that his records will be transferred upon payment by the student of all fees and charges due the community college, college, or university. Any community college, college, or university making such a transfer of such records shall notify the student of his right to receive a copy of the record and his right to a hearing to challenge the content of the record.

The California State University and Colleges Board of Trustees and the Regents of the University of California may adopt rules and regulations concerning transfer of such records to, from, or between schools under their respective jurisdictions.

Article 4. Rights of Students

22509.7. Any currently enrolled or former student has a right of access to all student records relating to him maintained by any public or private college or university, except those records which include information on more than one identifiable student, in which case only that information relating to the student requesting access shall be revealed.

Each college or university shall adopt procedures for the granting of requests by students to inspect and review records during regular school hours, provided that access shall be granted no later than 15 working days following the receipt of the request. Procedures shall include notification of the location of all official student records if not centrally located and the providing of qualified personnel to interpret records where appropriate.

22509.8. (a) A student may waive his right of access to any student records devoted solely to confidential recommendations for career placement or postsecondary admission; provided, that such recommendations are used solely for the purpose for which they were specifically intended, and provided, that the student shall be

notified, upon request, of the names of all persons making confidential recommendations. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from a college or university.

(b) The fact that a waiver has or has not been executed pursuant to this section shall not be revealed to any person other than the person or persons responsible for maintenance of student records or the person or persons making the confidential recommendation.

(c) No student may be required to sign a form saying that he has not waived access to any confidential recommendation.

22509.9. Each college or university shall establish procedures whereby a student may request, in writing, that information be removed from the student's record which he alleges to be: (1) inaccurate; (2) an unsubstantiated personal conclusion or inference; (3) a conclusion or inference outside of the observer's area of competence; or (4) not based upon the personal observation of a named person with the time and place of the observation noted.

If any of the student's allegations are sustained, the information shall be corrected or removed from the student's record and destroyed.

If any of the student's allegations are not sustained, the student shall have the right to submit a written statement of his objections to the information. This statement shall become a part of the student's record until such time as the information objected to is corrected or removed.

22509.10. Whenever there is included in any student record information concerning any disciplinary action taken by college or university personnel in connection with the student, the student shall be allowed to include in such record a written statement or response concerning the disciplinary action.

Article 5. Privacy of Student Records

22509.11. Colleges and universities shall adopt policies identifying those categories of directory information as defined in subdivision (c) of Section 22509.1 which may be released. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 21 (commencing with Section 29001), provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution, and provided further that any violation of this provision is a misdemeanor, punishable by a fine of not to exceed two thousand five hundred dollars ($2,500), and, in addition, the privilege of the school or college to receive such information shall be suspended for a period of two years from the time of discovery of the misuse of such information.

Any college or university may, in its discretion, limit or deny the release of specific categories of directory information to any public

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or private nonprofit organization based upon a determination of the best interests of students.

Directory information may be released according to local policy as to any student currently attending the college or university, provided that public notice is given at least annually of the categories of information which the college or university plans to release.

No directory information shall be released regarding any student when the student has notified the institution in writing that such information shall not be released.

22509.12. Nothing in this chapter shall preclude a college or university from providing, in its discretion, statistical data from which no student may be identified to any public agency or entity or private nonprofit college, university, or educational research and development organization when such actions would be in the best educational interests of students.

22509.13. A college or university may permit access to student records to any person for whom the student has executed written consent specifying the records to be released and identifying the party or class of parties to whom such records may be released. The recipient must be notified that the transmission of the information to others without the written consent of the student is prohibited. The consent notice shall be permanently kept with the record file.

22509.14. A college or university is not authorized to permit access to student records to any person without the written consent of the student or under judicial order except that access may be permitted to the following:

(a). Officials and employees of the college or university, provided that any such person has a legitimate educational interest to inspect a record.

(b) Authorized representatives of the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an administrative head of an education agency, state education officials, or their respective designees, or the United States Office for Civil Rights, where such 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, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students or their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of federal legal requirements.

(c) Other state and local officials or authorities to the extent that information is specifically required to be reported pursuant to state law adopted prior to November 19, 1974.

(d) Officials of other public or private schools or school systems, including local, county, or state correctional facilities where educational programs are provided, where the student seeks or

intends to enroll, or is directed to enroll, subject to the rights of students as provided in Section 22509.6.

(e) Agencies or organizations in connection with a student's application for, or receipt of, financial aid; provided, that information permitting the personal identification of students may be disclosed only as may be necessary for such purposes as to determine the eligibility of the student for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(f) Accrediting organizations in order to carry out their accrediting functions.

(g) 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, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students or their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted.

(h) Appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other persons, or subject to such regulations as may be issued by the Secretary of Health, Education, and Welfare.

No person, persons, agency, or organization permitted access to student records pursuant to this section shall permit access to any information obtained from such records by any other person, persons, agency, or organization without the written consent of the student; provided, however, that this paragraph shall not be construed as to require prior student consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as such persons have a legitimate educational interest in the information.

22509.15. Information concerning a student shall be furnished in compliance with a court order. The college or university shall make a reasonable effort to notify the student in advance of such compliance if lawfully possible within the requirements of the judicial order.

22509.16. The service of a subpoena upon a college or university employee solely for the purpose of causing him to produce a school record pertaining to any student may be complied with by such employee, in lieu of personal appearance as a witness in the proceeding, by submitting to the court, or other agency issuing the subpoena, at the time and place required by the subpoena, a copy of such record, accompanied by an affidavit certifying that such copy is a true copy of the original record on file in the college or university office. The copy of the record shall be in the form of a photostat,

microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

22509.17. The California State University and Colleges Board of Trustees shall adopt appropriate rules and regulations to insure the orderly implementation of this chapter.

22509.18. The provisions of this chapter shall be applicable to the University of California upon the adoption of a resolution by the Regents of the University of California making the provisions so applicable.

SEC. 11. Section 25430.1 of the Education Code is amended to read:

25430.1. As used in this chapter:

(a) "Student record" means any item of information directly related to an identifiable student, other than directory information, which is maintained by a community college or required to be maintained by any employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Student record" shall not mean information provided by a student's parents relating to applications for financial aid or scholarships, nor shall it mean confidential letters and statements of recommendations maintained by a community college on or before January 1, 1975, provided that such letters or statements are not used for purposes other than those for which they were specifically intended, nor shall it mean information related to a student compiled by a community college officer or employee which remains in the sole possession of the maker and is not accessible or revealed to any other person except a substitute. For purposes of this subdivision, "substitute" shall mean a person who performs on a temporary basis the duties of the individual who made the notes and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

"Student record" shall also not include information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which is created, maintained, or used only in connection with the provision of treatment to the student and is not available to anyone other than persons providing such treatment; provided, however, that such a record may be personally reviewed by a physician or other appropriate professional of the student's choice.

(b) "Student record" shall not mean information maintained by a community college law enforcement unit if the personnel of the unit do not have access to student records pursuant to Section 25430.15, if the information maintained by the unit is kept apart from information maintained pursuant to subdivision (a) of this section, if the information is maintained solely for law enforcement purposes, and if the information is not made available to persons other than law

enforcement officials of the same jurisdiction, nor shall it mean information maintained in the normal course of business pertaining to persons who are employed by a community college, provided that such information relates exclusively to such person in that person's capacity as an employee and is not available for use for any other purpose.

(c) "Directory information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

(d) "Access" means a personal inspection and review of a record or an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record.

SEC. 12. Section 25430.3 of the Education Code is amended to read:

25430.3. Community college districts shall notify students in writing of their rights under this chapter upon the date of the student's enrollment next following its effective date, and at least annually thereafter. The notice shall take a form which reasonably notifies students of the availability of the following specific information:

(a) The types of student records and information contained therein which are directly related to students and maintained by the institution.

(b) The official responsible for the maintenance of each type of record.

(c) The location of the log or record required to be maintained pursuant to Section 25430.4.

(d) The criteria to be used by the institution in defining "officials and employees" and in determining "legitimate educational interest" as used in Section 25430.4 and subdivision (a) of Section 25430.15.

(e) The policies of the institution for reviewing and expunging those records.

(f) The right of the student to access to his records.

(g) The procedures for challenging the content of student records.

(h) The cost if any which will be charged for reproducing copies of records.

(i) The categories of information which the institution has designated as directory information pursuant to Section 25430.12.

(j) Any other rights and requirements set forth in this chapter and the right of the student to file a complaint with the United States Department of Health, Education, and Welfare concerning an

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alleged failure by the institution to comply with the provisions of Section 438 of the General Education Provisions Act (20 U.S.C.A. 1232g).

SEC. 13. Section 25430.4 of the Education Code is repealed.

SEC. 14. Section 25430.4 is added to the Education Code, to read:

25430.4. A log or record shall be maintained for each student's record which lists all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interests therefor. Such listing need not include:

(a) Students to whom access is granted pursuant to Section 25430.8;

(b) Parties to whom directory information is released pursuant to Section 25430.12;

(c) Parties for whom written consent has been executed by the student pursuant to Section 25430.14; or

(d) Officials or employees having a legitimate educational interest pursuant to subdivision (a) of Section 25430.15.

The log or record shall be open to inspection only by the student and the community college official or his designee responsible for the maintenance of student records, and to other school officials with legitimate educational interests in the records, and to the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an administrative head of an education agency as defined in Public Law 93-380, and state educational authorities as a means of auditing the operation of the system.

SEC. 15. Section 25430.5 of the Education Code is amended to read:

25430.5. Any community college may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of students' records or (2) up to two verifications of various records of students. No charge may be made to search for or to retrieve any student record.

SEC. 16. Section 25430.7 of the Education Code is amended to read:

25430.7. Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, college or university, or school or school district upon a request from the student; provided, however, that the community college, college or university, or school or school district from which the student is transferring may notify the student that the student's records will be transferred upon payment by the student of all fees and charges due the community college, college or university, or school or school district. Any community college, college or university, or school or school district making such a transfer of such records shall notify the student of his right to receive a copy of the record and his right to a hearing to challenge the content of the record.

The Board of Governors of the California Community Colleges may adopt rules and regulations concerning transfer of such records to, from, or between schools under its jurisdiction.

SEC. 17. Section 25430.8 of the Education Code is amended to read:

25430.8. Any currently enrolled or former student has a right to access to any and all student records relating to him maintained by community colleges. The editing or withholding of any such records, except as provided for in this chapter, is prohibited.

Each community college district shall adopt procedures for the granting of requests by students to inspect and review records during regular school hours, provided that access shall be granted no later than 15 working days following the date of the request. Procedures shall include notification of the location of all official student records if not centrally located and the providing of qualified personnel to interpret records where appropriate.

SEC. 17.5. Section 25430.9 of the Education Code is amended to read:

25430.9. A student may waive his right to access to student records devoted solely to confidential recommendations for career placement or postsecondary admission; provided, that such recommendations are used solely for the purpose for which they were specifically intended, and provided, that the student shall be notified, upon request, of the names of all persons making confidential recommendations. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from a community college.

SEC. 18. Section 25430.10 of the Education Code is amended to read:

25430.10. (a) Any student may file a written request with the chief administrative officer of a community college district to correct or remove information recorded in his student records which he alleges to be: (1) inaccurate; (2) an unsubstantiated personal conclusion or inference; (3) a conclusion or inference outside of the observer's area of competence; or (4) not based on the personal observation of a named person with the time and place of the observation noted.

(b) Within 30 days of receipt of such request, the chief administrative officer or his designee shall meet with the student and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the community college district. The chief administrative officer or his designee shall then sustain or deny the allegations.

If the chief administrative officer or his designee sustains any or all of the allegations, he shall order the correction or removal and destruction of the information.

If the chief administrative officer or his designee denies any or all of the allegations and refuses to order the correction or removal of the information, the student may, within 30 days of the refusal,

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appeal the decision in writing to the governing board of the community college district.

(c) Within 30 days of receipt of such an appeal, the governing board shall, in closed session with the student and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the community college district, determine whether to sustain or deny the allegations.

If the governing board sustains any or all of the allegations, it shall order the chief administrative officer or his designee to immediately correct or remove and destroy the information.

The decision of the governing board shall be final.

Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board, unless the student initiates legal proceedings relative to the disputed information within the prescribed period.

(d) If the final decision of the governing board is unfavorable to the student, or if the student accepts an unfavorable decision by the chief administrative officer, the student shall have the right to submit a written statement of his objections to the information. This statement shall become a part of the student's record until such time as the information objected to is corrected or removed.

SEC. 19. Section 25430.12 of the Education Code is amended to read:

25430.12. Community college districts shall adopt a policy identifying those categories of directory information as defined in subdivision (c) of Section 25430.1 which may be released. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 21, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution, and provided further that any violations of this provision is a misdemeanor, punishable by a fine of not to exceed two thousand five hundred dollars ($2,500), and, in addition, the privilege of the school or college to receive such information shall be suspended for a period of two years from the time of discovery of the misuse of such information.

Any community college district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students.

Directory information may be released according to local policy as to any student currently attending the community college, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. No directory information shall be released regarding any student when the student has notified the school that such information shall not be released.

SEC. 20. Section 25430.14 of the Education Code is amended to read:

25430.14. A community college district may permit access to student records to any person for whom the student has executed written consent specifying the records to be released and identifying the party or class of parties to whom the records may be released. The recipient must be notified that the transmission of the information to others without the written consent of the student is prohibited. The consent notice shall be permanently kept with the record file.

SEC. 21. Section 25430.15 of the Education Code is amended to read:

25430.15. A community college or community college district is not authorized to permit access to student records to any person without the written consent of the student or under judicial order except that access may be permitted to the following:

(a) Officials and employees of the community college; provided, that any such person has a legitimate educational interest to inspect a record.

(b) Authorized representatives of the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an administrative head of an education agency, state education officials, or their respective designees or the United States Office of Civil Rights, where such 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, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students or their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of federal legal requirements.

(c) Other state and local officials or authorities to the extent that information is specifically required to be reported pursuant to state law adopted prior to November 19, 1974.

(d) Officials of other public or private schools or school systems, including local, county, or state correctional facilities where educational programs are provided, where the student seeks or intends to enroll, or is directed to enroll, subject to the rights of students as provided in Section 25430.7.

(e) Agencies or organizations in connection with a student's application for, or receipt of, financial aid; provided, that information permitting the personal identification of students may be disclosed only as may be necessary for such purposes as to determine the eligibility of the student for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(f) Accrediting organizations in order to carry out their accrediting functions.

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(g) 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, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students or their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted.

(h) Appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other persons, or subject to such regulations as may be issued by the Secretary of Health, Education, and Welfare.

No person, persons, agency or organization permitted access to student records pursuant to this section shall permit access to any information obtained from such records by any other person, persons, agency or organization without the written consent of the student; provided, however, that this paragraph shall not be construed as to require prior student consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as such persons have a legitimate educational interest in the information.

SEC. 21.5. Section 25430.16 of the Education Code is amended to read:

25430.16. Information concerning a student shall be furnished in compliance with a court order. The community college district shall make a reasonable effort to notify the student in advance of such compliance if lawfully possible within the requirements of the judicial order.

SEC. 22. No specific appropriation is contained in this act because this act merely affirms for the state that which has been declared existing law or regulation through action by the federal government and because general compliance with this act is a condition of the continued receipt of federal funds.

CHAPTER 1347

An act to amend Section 49062 of, and to add Section 49452.5 to, the Education Code, relating to pupil health, and making an appropriation therefor.

[Approved by Governor September 30, 1980. Filed with Secretary of State September 30, 1980.]

The people of the State of California do enact as follows:

SECTION 1. Section 49062 of the Education Code is amended to read:

49062. School districts shall establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. Pupil records shall include a pupil's health record. Such regulations shall establish state policy as to what items of information shall be placed into pupil records and what information is appropriate to be compiled by individual school officers or employees under the exception to pupil records provided in subdivision (b) of Section 49061. No pupil records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 49070.

SEC. 2. Section 49452.5 is added to the Education Code, to read:

49452.5. The governing board of any school district shall, subject to Section 49451 and in addition to the physical examinations required pursuant to Sections 208,321, and 323.7 of the Health and Safety Code, provide for the screening of every female pupil in grade 7 and every male pupil in grade 8 for the condition known as scoliosis. The screening shall be in accord with standards established by the Department of Education. The screening shall be supervised only by qualified supervisors of health as specified in Sections 44871 to 44878, inclusive, and Section 49422, or by school nurses employed by the district or the county superintendent of schools, or pursuant to contract with an agency authorized to perform such services by the county superintendent of schools of the county in which the district is located pursuant to Sections 1750 to 1754, inclusive, and Section 49402 of this code, Section 485 of the Health and Safety Code, and guidelines established by the State Board of Education. The screening shall be given only by individuals who supervise, or who are eligible to supervise, the screening, or by certificated employees of the district or of the county superintendent of schools who have received in-service training, pursuant to rules and regulations adopted by the State Board of Education, to qualify them to perform such screenings. It is the intent of the Legislature that such screenings be performed during the regular schoolday and that any staff time devoted to such activities be redirected from other ongoing activities not related to the pupil's health care.

In-service training may be conducted by orthopedic surgeons,

physicians, registered nurses, and physical therapists, who have received specialized training in scoliosis detection.

The governing board of any school district shall provide for the notification of the parent or guardian of any pupil suspected of having scoliosis. The notification shall include an explanation of scoliosis, the significance of treating it at an early age, and the public services available, after diagnosis, for treatment. Referral of the pupil and the pupil's parent or guardian to appropriate community resources shall be made pursuant to Sections 49426 and 49456.

No action of any kind in any court of competent jurisdiction shall lie against any individual, authorized by this section to supervise or give a screening, by virtue of the provisions of this section.

SEC. 2. The sum of three hundred forty-seven thousand four hundred seventy-one dollars ($347,471) is hereby appropriated from the General Fund to the Controller for allocation and disbursement to local agencies and school districts pursuant to Section 2231 of the Revenue and Taxation Code to reimburse them for costs mandated by the state and incurred by them pursuant to this act, including, but not limited to, screening, recordkeeping, referral, follow up, and administration of the program.

CHAPTER 498

An act to amend Sections 1296, 2557, 8152, 8153, 17717.5, 17722, 17749, 17780, 35031, 39363, 41972, 44251, 44662, 44663, 44664, 44682, 44683, 44684, 44685, 44687, 44688, 44689, 44882, 44884, 44901, 44932, 44933, 44934, 44935, 44936, 44937, 44938, 44943, 44944, 44948, 44949, 44955, 44956, 44957, 46142, 46144, 46147, 48430, 49067, 52302.5, 52853, 52858, 54060, 56723, 56782, 60240, 60246, 60602, 60603, 60604.5, and 62000 of, to amend the heading of Article 3 (commencing with Section 44681) of Chapter 3.1 of Part 25 of, to amend and renumber Section 48438 of, to amend and repeal Sections 42241.4, 44255, and 51225 of, to add Sections 8154, 14002.1, 14002.2, 17717.7, 17751, 33308.5, 35160.5, 41301.3, 41868, 42238.9, 42250, 44227.5, 44277, 44278, 44279, 44830.3, 44885.5, 44948.3, 44948.5, 44955.5, 44956.5, 45023.4, 45100.5, 45104.5, 45108.5, 45108.7, 45256.5, 48260.5, 48431.6, 48431.7, 48438, 48440, 51225.3, 51225.4, 51226, 51228, 52048, 52049, 52304.1, 52333, 54029, 56774.5, 60247, 60603.5, 62048, 60249, 60604.7, and 76006 to, to add and repeal Sections 42238.1, 42238.2, 42238.4, 42238.7, and 42238.8 of, to add Chapter 11 (commencing with Section 11000) to Part 7 of, Article 7 (commencing with Section 33600) to Chapter 4 of Part 20 of, Article 4.5 (commencing with Section 42290) to Chapter 7 of Part 24 of, Article 7.5 (commencing with Section 44325) and Article 9 (commencing with Section 44360) to Chapter 2 of Part 25 of, Chapter 3.15 (commencing with Section 44689.5) to Part 25 of, Chapter 3.3 (commencing with Section 44700) to Part 25 of, Article 8 (commencing with Section 46200) to Chapter 2 of Part 26 of, Article 7 (commencing with Section 48070) to Chapter 1 of Part 27 of, Article 2.3 (commencing with Section 48643) to Chapter 4 of Part 27 of, Article 7.5 (commencing with Section 52460) to Chapter 9 of Part 28 of, Article 2.5 (commencing with Section 54650) to Chapter 9 of Part 29 of, Chapter 6 (commencing with Section 58800) to Part 31 of, Article 8 (commencing with Section 60700) to Chapter 5 of Part 33 of, Part 35 (commencing with Section 63000) to, and Article 6 (commencing with Section 69600) to Chapter 2 of Part 42 of, to add and repeal Chapter 3.4 (commencing with Section 44750) of Part 25 of, to repeal Sections 1275, 42237, 42239.1, 42239.5, and 42239.8 of, to repeal Chapter 2 (commencing with Section 44200) of Part 25 of, and Article 8 (commencing with Section 56770) of Chapter 7 of Part 30 of, to repeal and add Sections 42238, 42238.5, 42238.6, 42239, 46145, and 52616 of, to repeal and add Article 4 (commencing with Section 42280) of Chapter 7 of, and Article 10 (commencing with Section 41850) of Chapter 8 of, Part 24 of, Article 4 (commencing with Section 44490) of Chapter 3 of, and Article 2 (commencing with Section 44680) to Chapter 3.1 of, Part 25 of, and Article 1 (commencing with Section 48900) of Chapter 6 of Part 27 of, the Education Code, to amend Sections 3543.2, 3543.4, 35040, and 66493 of the Government Code, to amend Sections 72, 17024.5, 17048, 17053.7, 17063, 17137, 17932, 18033, 18681.1, 18684, 18685, 18685.07, 18699, 18802, 18934, 19062.11, 19405, 19414, 23701d, 23701q, 24305,

following:

(1) Remand the matter to the governing board for reconsideration and may in addition order the pupil reinstated pending such reconsideration.

(2) Grant a hearing de novo upon reasonable notice thereof to the pupil and to the governing board. The hearing shall be conducted in conformance with the rules and regulations adopted by the county board under Section 48919.

(b) In all other cases, the county board shall enter an order either affirming or reversing the decision of the governing board. In any case in which the county board enters a decision reversing the local board, the county board may direct the local board to expunge the record of the pupil and the records of the district of any references to the expulsion action and such expulsion shall be deemed not to have occurred.

48924. The decision of the county board of education shall be final and binding upon the pupil and upon the governing board of the school district. The pupil and the governing board shall be notified of the final order of the county board, in writing, either by personal service or by certified mail. The order shall become final when rendered.

48925. As used in this article:

(a) "Day" means a calendar day unless otherwise specifically provided.

(b) "Expulsion" means removal of a pupil from (1) the immediate supervision and control, or (2) the general supervision, of school personnel, as those terms are used in Section 46300.

(c) "Schoolday" means a day upon which the schools of the district are in session or weekdays during the summer recess.

(d) "Suspension" means removal of a pupil from ongoing instruction for adjustment purposes. However, "suspension" does not mean any of the following:

(1) Reassignment to another education program or class at the same school where the pupil will receive continuing instruction for the length of day prescribed by the governing board for pupils of the same grade level.

(2) Referral to a certificated employee designated by the principal to advise pupils.

(3) Removal from the class, but without reassignment to another class or program, for the remainder of the class period without sending the pupil to the principal or the principal's designee as provided in Section 48910. Removal from a particular class shall not occur more than once every five schooldays.

(e) "Pupil" includes a pupil's parent or guardian or legal counsel.

SEC. 92. Section 49067 of the Education Code is amended to read:

49067. (a) The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it

becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

(b) The governing board of any school district may adopt regulations authorizing a teacher to assign a failing grade to any pupil whose unexcused absences from the teacher's class equal or exceed a maximum number which shall be specified by the board. Regulations adopted pursuant to this subdivision shall include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

(c) Notwithstanding the provisions of subdivision (a) of Section 49061, the provisions of this section shall apply to the parent or guardian of any pupil without regard to the age of the pupil.

SEC. 93. Section 51225 of the Education Code is amended to read:

51225. No pupil shall receive a diploma of graduation from high school who has not completed the course of study prescribed by the governing board. Requirements for graduation shall include:

(a) English.

(b) American history.

(c) American government.

(d) Mathematics.

(e) Science.

(f) Physical education, unless the pupil has been exempted pursuant to the provisions of this code.

(g) Such other subjects as may be prescribed.

The governing board, with the active involvement of parents, administrators, teachers, and students, shall, by January 1, 1979, adopt alternative means for students to complete the prescribed course of study which may include practical demonstration of skills and competencies, work experience or other outside school experience, interdisciplinary study, independent study, and credit earned at a postsecondary institution. Requirements for graduation and specified alternative modes for completing the prescribed course of study shall be made available to students, parents, and the public.

This section shall remain in effect until July 1, 1986, and as of that date is repealed unless a later enacted statute which is chaptered before July 1, 1986, deletes or extends that date.

SEC. 94. Section 51225.3 is added to the Education Code, to read:

51225.3. (a) Commencing with the 1986–87 school year, no pupil shall receive a diploma of graduation from high school who, while in grades 9 through 12, has not completed:

(1) At least the following numbers of courses in the subjects specified, each course having a duration of one year.

(A) Three courses in English.

to the Student Aid Commission for administration costs incurred pursuant to Article 6 (commencing with Section 69600) of Chapter 2 of Part 42 of the Education Code, the following sums:

(a) For the 1983–84 fiscal year	$100,000
(b) For the 1984–85 fiscal year	100,000

SEC. 236. Notwithstanding Section 3525 of the Elections Code or any other provision of law to the contrary, if the Legislature adopts Assembly Constitutional Amendment 44 during the 1983–84 Regular Session, it shall be submitted to the voters by the Secretary of State at the first special or regular statewide election conducted on or after June 5, 1984, and occurring at least 131 days after the adoption of the measure by the Legislature.

SEC. 237. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 238. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 239. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit this act to become operative as early as possible in the 1983–84 school year, and so facilitate the orderly administration of the public school system, it is necessary that this act take effect immediately.

CHAPTER 593

An act to amend Sections 67143 and 76243 of, and to add Sections 67134 and 76234 to, the Education Code, relating to postsecondary education.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 67134 is added to the Education Code, to read:

67134. Whenever there is included in any student record information concerning any disciplinary action taken by a college or university in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assualt or physical abuse shall be informed within three days of the results of any disciplinary action by the college or university and the results of any appeal. The alleged

(8) Appropriate persons in connection with an emergency if the knowledge of that information is necessary to protect the health or safety of a student or other persons, or subject to any regulations issued by the Secretary of Health, Education, and Welfare.

No person, persons, agency, or organization permitted access to student records pursuant to this section shall permit access to any information obtained from those records by any other person, persons, agency, or organization without the written consent of the student, provided that this paragraph shall not require prior student consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency or organization obtaining access, so long as those persons have a legitimate educational interest in the information.

(b) The alleged victim of any sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat or assault, or any conduct that threatens the health and safety of the alleged victim, which is the basis of any disciplinary action taken by a college or university, shall be permitted access to that information. For the purposes of this subdivision, access to student record information shall be in the form of notice of the results of any disciplinary action by the college or university and the results of any appeal, which shall be provided to the alleged victim within three days following that disciplinary action or appeal. The alleged victim shall keep the results of that disciplinary action and appeal confidential.

SEC. 3. Section 76234 is added to the Education Code, to read:

76234. Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assualt or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. The alleged victim shall keep the results of that disciplinary action and appeal confidential.

SEC. 4. Section 76243 of the Education Code is amended to read:

76243. (a) A community college or community college district is not authorized to permit access to student records to any person without the written consent of the student or under judicial order except that access may be permitted to the following:

(1) Officials and employees of the community college, if that person has a legitimate educational interest to inspect a record.

(2) Authorized representatives of the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an administrative head of an education agency, state education officials, or their respective designees or the United States Office of Civil Rights, where that information is necessary to audit or evaluate a

including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat or assault, or any conduct that threatens the health and safety of the alleged victim, which is the basis of any disciplinary action taken by a community college, shall be permitted access to that information. For the purposes of this subdivision, access to student record information shall be in the form of notice of the results of any disciplinary action by the community college and the results of any appeal, which shall be provided to the alleged victim within three days following that disciplinary action or appeal. The alleged victim shall keep the results of that disciplinary action and appeal confidential.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 1539 CHAPTERED 09/28/93

CHAPTER 561
FILED WITH SECRETARY OF STATE SEPTEMBER 28, 1993
APPROVED BY GOVERNOR SEPTEMBER 27, 1993
PASSED THE ASSEMBLY SEPTEMBER 10, 1993
PASSED THE SENATE SEPTEMBER 8, 1993
AMENDED IN SENATE AUGUST 30, 1993
AMENDED IN SENATE JULY 13, 1993
AMENDED IN ASSEMBLY MAY 26, 1993
AMENDED IN ASSEMBLY APRIL 20, 1993

INTRODUCED BY Assembly Member Honeycutt

MARCH 4, 1993

An act to add Section 49076.5 to the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 1539, Honeycutt. Pupil records: access by law enforcement.

Existing law makes various provisions for the protection of the privacy of pupil records. Existing law prohibits a school district from permitting access to pupil records without written parental consent or under judicial order, except under limited circumstances. Existing law also requires that when a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent record or copy thereof be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll.

This bill would require school districts to provide designated peace officers, as defined, with any information specific to a particular child's identity and location that relates to the transfer of that pupil's records when probable cause exists that the pupil has been kidnapped, that the pupil's abductor may have enrolled the pupil in a school, and that the law enforcement agency has begun an active investigation.

This bill, by placing new responsibilities on school districts relating to the release of pupil records to designated law enforcement officials, would thereby 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

The bill would become operative on the July 1 following the date on which the bill takes effect.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 49076.5 is added to the Education Code, to read:

49076.5. (a) Notwithstanding Section 49076, each school district shall release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information.

(b) In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

(3) This section does not authorize designated peace officers to obtain any pupil record information other than that authorized by this section.

(4) The law enforcement agency requesting the information shall ensure that at no time shall any information obtained pursuant to this section be disclosed or used for any purpose other than to assist in the investigation of suspected criminal conduct of kidnapping. A violation of this paragraph shall be punishable as a misdemeanor.

(5) The designated peace officer requesting information authorized for release by this section shall make a record on a form created and maintained by the law enforcement agency which shall include the name of the pupil about whom the inquiry was made, the consent of a parent having legal custody of the pupil or a legal guardian, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the school district employee to whom the request was made, and the information that was requested.

(6) Whenever the designated peace officer requesting information authorized for release by this section does so in person, by telephone, or by some means other than in writing, the officer shall provide the school district with a letter confirming the request for pupil record information prior to any release of information.

(7) No school district, or official or employee thereof,

shall be subject to criminal or civil liability for the release of pupil record information in good faith as authorized by this section.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

Pursuant to Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the July 1 following the date on which the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 446 CHAPTERED 10/11/95

CHAPTER 758
FILED WITH SECRETARY OF STATE OCTOBER 11, 1995
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PASSED THE ASSEMBLY SEPTEMBER 15, 1995
AMENDED IN SENATE SEPTEMBER 7, 1995
AMENDED IN SENATE AUGUST 21, 1995
AMENDED IN SENATE JULY 19, 1995
AMENDED IN SENATE JUNE 12, 1995
AMENDED IN ASSEMBLY MARCH 27, 1995

INTRODUCED BY Assembly Committee on Higher Education

FEBRUARY 16, 1995

An act to amend, repeal, and add Sections 28, 1247.6, 2902, 4939, 4980.40, and 18629 of the Business and Professions Code, to amend, repeal, and add Section 1812.501 of the Civil Code, to amend, repeal, and add Section 10251 of the Corporations Code, to amend Sections 1510, 8152, 12050, 12052, 12053, 12400, 66010, 66015, 66022, 66023, 66202.5, 66743, 66753.5, 66903, 66903.3, 67385, 67500, 68011, 68133, 69509, 69613, 69615.2, 69634, 69900, 69908, 71000, 71020.5, 71090.5, 72023.5, 72411.5, 72425, 72620, 74270, 76000, 76140, 76210, 76225, 76231, 76232, 76240, 76245, 76330, 76330.1, 76355, 76370, 76380, 76391, 78015, 78217, 79121, 81033, 81130.5, 81141, 81162, 81177, 81314, 81345, 81348, 81401, 81530, 81551, 81661, 81821, 84362, 84501, 84751, 84810.5, 84820, 85223, 85233, 85267, 87008, 87017, 87411, 87413, 87414, 87418, 87419, 87420, 87423, 87448, 87451, 87453, 87460, 87464, 87468, 87469, 87470, 87483, 87487, 87603, 87604, 87622, 87672, 87673, 87675, 87676, 87677, 87701, 87715, 87732, 87734, 87740, 87744, 87745, 87746, 87762, 87764, 87768.5, 87770, 87774, 87780, 87781, 87787, 87790, 87832, 88000, 88001, 88002, 88003, 88004.5, 88010, 88013, 88014, 88015, 88020, 88023, 88024, 88030, 88033, 88036, 88050, 88051, 88053, 88054, 88057, 88063.5, 88076, 88083, 88086.5, 88092, 88093, 88097, 88098, 88104, 88105, 88107, 88120, 88125, 88126, 88128, 88132, 88136, 88164, 88165, 88167, 88168, 88185, 88191, 88192, 88194, 88195, 88196, 88197, 88198, 88203, 88205, 88205.5, 88206, 88207, 88227, 88245, 88263, 89002, 89036, 89046, 89047, 89300, 89310, 89537, 92620, 99100, 99103, 99105, and 99106 of, to amend the heading of Article 1 (commencing with Section 10000) of Chapter 1 of Part 7 of, to amend the heading of Article 13 (commencing with Section 69760) of Chapter 2 of Part 42 of, to amend and renumber the heading of Part 43.5 (commencing with Section 70900) of, to amend, repeal, and add Sections 8092, 8092.5, 44227, 49073, 66170, 69509.5, 94050, and 94355 of, to add Sections 67359.9, 84756, 84757, and 84758 to, to add an article heading immediately preceding Section 92020 of, to add Article 12 (commencing with Section 44390) to Chapter 2 of Part 25 of, Article 6 (commencing with Section 66060) and Article 7 (commencing with Section 66070) to Chapter 2 of Part 40 of, and Article 6 (commencing with Section 89250) to Chapter 2 of Part 55 of, to add Chapter 11.3 (commencing with Section 66940) to Part 40 of, and Chapter 7 (commencing with Section 94700) to Part 59 of, to repeal Sections 8081, 8084, 12051, 12061, 66207, 66211, 66605.5, 66723, 66744, 66903.4, 66903.6, 67321, 67386, 67392, 69507.7, 69534, 69534.2, 69534.5, 69534.6, 69639, 69766.1, 72410, 76320, 76392, 78217, 78310, 87012, 87018, 87461, 87772, 87773, 87778, 88032, 88035.5, 88079.1, 89003, 89004, 89009, 89032, 89033, 89040, 89070.45, 89081, 89082, 89083, 89211, 89241, 89242, 89703, 92010, 92610, and

Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending in the district in the preceding fiscal year, (2) the expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending all districts during the preceding fiscal year, (3) an amount not to exceed the fee established by the governing board of any contiguous district, or (4) an amount not to exceed the amount that was expended by the district for the expense of education, but in no case less than the statewide average as set forth in paragraph (2). However, if for the district's preceding fiscal year FTES of all students attending in the district in noncredit courses is equal to, or greater than, 10 percent of the district's total FTES attending in the district, the district, in calculating the amount in paragraph (1), may substitute, instead, the data for expense of education in grades 13 and 14 and FTES in grades 13 and 14 attending in the district.

(f) The governing board of each community college district also shall adopt a tuition fee per unit of credit for nonresident students enrolled in more or less than 15 units of credit per term by dividing the fee determined in subdivision (e) by 30 for colleges operating on the semester system and 45 for colleges operating on the quarter system and rounding to the nearest whole dollar. The same rate shall be uniformly charged nonresident students attending any terms or sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

(g) In adopting a tuition fee for nonresident students, the governing board of each community college district shall consider nonresident tuition fees of public community colleges in other states.

(h) Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

(i) Any district that has fewer than 1,500 FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California governing student attendance and fees may exempt students from that state from the mandatory fee requirement described in subdivision (a) for nonresident students.

(j) Any district that has more than 1,500, but less than 3,001, FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California governing student attendance and fees may, in any one fiscal year, exempt up to 100 FTES from that state from the mandatory fee requirement described in subdivision (a) for nonresident students.

(k) The attendance of nonresident students who are exempted pursuant to subdivision (i) or (j) from the mandatory fee requirement described in subdivision (a) for nonresident students may be reported as resident FTES for state apportionment purposes. Any nonresident student reported as resident FTES for state apportionment purposes pursuant to subdivision (i) or (j) shall pay a fee of forty-two dollars ($42) per course unit. That fee is to be included in the FTES adjustments described in Section 76330 for purposes of computing apportionments.

SEC. 90. Section 76210 of the Education Code is amended to read:

76210. As used in this chapter, the following definitions shall

apply:

(a) (1) "Student record" means any item of information directly related to an identifiable student, other than directory information, which is maintained by a community college or required to be maintained by any employee in the performance of his or her duties, whether recorded by handwriting, print, tapes, film, microfilm or other means.

(2) "Student record" does not include (A) confidential letters and statements of recommendations maintained by a community college on or before January 1, 1975, if these letters or statements are not used for purposes other than those for which they were specifically intended, (B) information provided by a student's parents relating to applications for financial aid or scholarships, or (C) information related to a student compiled by a community college officer or employee that remains in the sole possession of the maker and is not accessible or revealed to any other person except a substitute. For purposes of this paragraph, "substitute" means a person who performs, on a temporary basis, the duties of the individual who made the notes and does not refer to a person who permanently succeeds the maker of the notes in his or her position.

(3) "Student record" also does not include information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity, and that is created, maintained, or used only in connection with the provision of treatment to the student and is not available to anyone other than persons providing that treatment. However, that record may be personally reviewed by a physician or other appropriate professional of the student's choice.

(4) "Student record" does not include information maintained by a community college law enforcement unit, if the personnel of the unit do not have access to student records pursuant to Section 76243, the information maintained by the unit is kept apart from information maintained pursuant to subdivision (a), the information is maintained solely for law enforcement purposes, and the information is not made available to persons other than law enforcement officials of the same jurisdiction. "Student record" does not include information maintained in the normal course of business pertaining to persons who are employed by a community college, if the information relates exclusively to the person in that person's capacity as an employee and is not available for use for any other purpose.

(b) "Directory information" means one or more of the following items: a student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

(c) "Access" means a personal inspection and review of a record or an accurate copy of a record, or an oral description or communication of a record or an accurate copy of a record, and a request to release a copy of any record.

SEC. 91. Section 76225 of the Education Code is amended to read:

76225. Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, or college or university upon a request from the student. However, the community college,

college, or university from which the student is transferring may notify the student that the student's records will be transferred upon payment by the student of all fees and charges due the community college, college, or university. Any community college, college, or university making a transfer of these records shall notify the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record.

The board of governors may adopt rules and regulations concerning transfer of these records to, from, or between colleges under its jurisdiction.

SEC. 92. Section 76231 of the Education Code is amended to read:

76231. A student may waive his or her right to access to student records devoted solely to confidential recommendations for career placement, postsecondary admission, or the receipt of an honor or honorary recognition. However, the recommendations shall be used solely for the purpose for which they were specifically intended, and the student shall be notified, upon request, of the names of all persons making confidential recommendations. A waiver may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from a community college.

SEC. 93. Section 76232 of the Education Code is amended to read:

76232. (a) Any student may file a written request with the chief administrative officer of a community college district to correct or remove information recorded in his or her student records which the student alleges to be: (1) inaccurate; (2) an unsubstantiated personal conclusion or inference; (3) a conclusion or inference outside of the observer's area of competence; or (4) not based on the personal observation of a named person with the time and place of the observation noted.

(b) Within 30 days of receipt of the request, the chief administrative officer, or his or her designee, shall meet with the student and the employee who recorded the information in question, if any, if the employee is presently employed by the community college district. The chief administrative officer or his or her designee shall then sustain or deny the allegations.

If the chief administrative officer, or his or her designee, sustains any or all of the allegations, he or she shall order the correction or removal and destruction of the information.

If the chief administrative officer, or his or her designee, denies any or all of the allegations and refuses to order the correction or removal of the information, the student, within 30 days of the refusal, may appeal the decision in writing to the governing board of the community college district.

(c) Within 30 days of receipt of an appeal, the governing board shall, in closed session with the student and the employee who recorded the information in question, if any, and if that employee is presently employed by the community college district, determine whether to sustain or deny the allegations.

If the governing board sustains any or all of the allegations, it shall order the chief administrative officer, or his or her designee, to immediately correct or remove and destroy the information.

The decision of the governing board shall be final.

Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board unless the student initiates legal proceedings relative to the disputed information within the prescribed period.

(d) If the final decision of the governing board is unfavorable to the student or if the student accepts an unfavorable decision by the

chief administrative officer, the student shall have the right to submit a written statement of his or her objections to the information. This statement shall become a part of the student's record until the information objected to is corrected or removed.

SEC. 94. Section 76240 of the Education Code is amended to read:

76240. Community college districts shall adopt a policy identifying those categories of directory information as defined in subdivision (b) of Section 76210 which may be released. The names and addresses of students may be provided to a private school or college operating under Sections 8080 to 8093, inclusive, Sections 33190 and 33191, Sections 60670 to 60672, inclusive, or Sections 94000 to 94409, inclusive, or its authorized representative. However, no private school or college shall use this information for other than purposes directly related to the academic or professional goals of the institution; any violation of this provision is a misdemeanor, punishable by a fine of not to exceed two thousand five hundred dollars ($2,500), and, in addition, the privilege of the school or college to receive this information shall be suspended for a period of two years from the time of discovery of the misuse of the information.

Any community college district may limit or deny the release of specific categories of directory information based upon a determination of the best interests of students.

Directory information may be released according to local policy as to any former student or any student currently attending the community college. However, public notice shall be given at least annually of the categories of information which the district plans to release and of the recipients. No directory information shall be released regarding any student or former student when the student or former student has notified the institution that the information shall not be released.

SEC. 95. Section 76245 of the Education Code is amended to read:

76245. The service of a subpoena upon a community college employee solely for the purpose of causing the employee to produce a school record pertaining to any student may be complied with by that employee, in lieu of personal appearance as a witness in the proceeding, by submitting to the court, or other agency issuing the subpoena, at the time and place required by the subpoena, a copy of the record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

SEC. 96. Section 76320 of the Education Code is repealed.

SEC. 97. Section 76330 of the Education Code is amended to read:

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public postsecondary educational institution or any private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to Section 94702. Any student charged a fee pursuant to this section shall be exempt from the fees required pursuant to Section 76300.

(b) The governing board shall exempt from subdivision (a), and charge the fees specified in Section 76300 to, a student who is any of the following:

adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 293.5. Section 633 is added to the Unemployment Insurance Code, to read:

633. (a) For purposes of coverage under Part 2 (commencing with Section 2601) of Division 1, "employment" does not include services performed as an intermittent or adjunct instructor at a postsecondary educational institution which meets the requirements of Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code if the intermittent or adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

(c) This section shall become operative on January 1, 1997.

SEC. 294. Section 282 of this act shall become operative on January 1, 1997.

SEC. 295. (a) Except as provided in subdivision (b), any section of any act enacted by the Legislature during the 1995 calendar year that takes effect on or before January 1, 1996, and that amends, amends and renumbers, adds, repeals and adds, or repeals a provision amended, repealed, or added by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

(b) Subdivision (a) does not apply to any of the following:

(1) Section 2902 of the Business and Professions Code, as amended by Chapter 279 of the Statutes of 1995.

(2) Section 4980.40 of the Business and Professions Code, as amended by Chapter 327 of the Statutes of 1995.

(3) Section 72023.5 of the Education Code, as amended by Chapter 82 of the Statutes of 1995.

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CHAPTER 879
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AMENDED IN SENATE JULY 7, 1996
AMENDED IN SENATE JUNE 20, 1996
AMENDED IN ASSEMBLY MARCH 30, 1995

INTRODUCED BY Assembly Member Ducheny

FEBRUARY 24, 1995

An act to amend Section 1985.3 of the Code of Civil Procedure and to amend Sections 49077, 49078, 76244, and 76245 of the Education Code, relating to records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, Ducheny. Student and consumer records.

(1) Existing law authorizes any consumer whose personal records are sought by a subpoena duces tecum to quash or modify it by a motion filed with the court prior to the date specified for production on the subpoena.

This bill, operative as specified, would limit the applicability of this authorization to a consumer who is a party to the civil action in which the subpoena duces tecum is served and would authorize other consumers to serve on the requesting party and witness a written objection to the subpoena duces tecum. The bill would authorize the requesting party to bring a motion to enforce the subpoena within 20 days of the service of the written objection, as specified.

(2) Existing law provides that no witness shall be required to produce personal records after receipt of notice that this motion has been brought, except as specified.

This bill, operative as specified, would provide that no witness shall be required, except as specified, to produce personal records after receipt of this notice or service of the written objection described in (1).

(3) Existing law requires school districts and community college districts to make a reasonable effort to notify students prior to complying with a court order requesting information concerning the student.

This bill would provide that information concerning a student shall be furnished in compliance with a court order, or pursuant to any lawfully issued subpoena, upon the condition that, in the case of school districts, the school district makes a reasonable effort to notify the parent or legal guardian and the pupil and, in the case of community college districts, the community college district makes a reasonable effort to notify the student, of a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order, in advance of compliance therewith by the school district or community college district. Because this requirement would impose additional duties

and responsibilities upon local school districts and community college districts, the bill would impose a state-mandated local program.

(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

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.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1985.3 of the Code of Civil Procedure is amended to read:

1985.3. (a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original or any copy of books, documents, or other writings pertaining to a consumer and which are maintained by any "witness" which is a physician, chiropractor, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent licensed pursuant to Division 6 (commencing with Section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, or secondary school.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) The date specified in a subpoena duces tecum for the production of personal records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of

the affidavit supporting the issuance of the subpoena, and of the notice described in subdivision (e). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Except as to records subpoenaed for a criminal proceeding or records subpoenaed during trial, a subpoena duces tecum served upon a witness with records in more than one location shall be served no less than 10 days prior to the date specified for production, unless good cause is shown pursuant to subdivision (h).

(e) Every copy of the subpoena duces tecum and affidavit served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this

subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness prior to production.

Any other consumer whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the requesting party and the witness a written objection that specifies the specific grounds on which production of the personal records should be prohibited.

No witness shall be required to produce personal records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected. No witness shall be required to produce personal records after service of a written objection by a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

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

49077. Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The school district shall make a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

SEC. 3. Section 49078 of the Education Code is amended to read:

49078. The service of a lawfully issued subpoena or a court order upon a public school employee solely for the purpose of causing him or her to produce a school record pertaining to any pupil may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

SEC. 4. Section 76244 of the Education Code is amended to read:

76244. Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The community college district shall make a reasonable effort to notify the student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

SEC. 5. Section 76245 of the Education Code is amended to read:

76245. The service of a lawfully issued subpoena or a court order upon a community college employee solely for the purpose of causing the employee to produce a school record pertaining to any student may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

SEC. 6. If both this bill and SB 1821 are enacted and become operative on or before January 1, 1997, each bill amends Section 1985.3 of the Code of Civil Procedure, and this bill is enacted after SB 1821, Section 1 of this bill, shall not become operative, and Section 1 of SB 1821, shall become operative.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 933 CHAPTERED 08/19/98

CHAPTER 311
FILED WITH SECRETARY OF STATE AUGUST 19, 1998
APPROVED BY GOVERNOR AUGUST 18, 1998
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PASSED THE ASSEMBLY AUGUST 11, 1998
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AMENDED IN ASSEMBLY JUNE 10, 1998
AMENDED IN SENATE JUNE 3, 1997
AMENDED IN SENATE MAY 5, 1997
AMENDED IN SENATE APRIL 7, 1997

INTRODUCED BY Senator Thompson
(Principal coauthor: Assembly Member Aroner)
(Coauthors: Assembly Members Margett and Ortiz)

FEBRUARY 27, 1997

An act to amend Sections 56140, 56200, 56205, and 56366 of, to add Sections 49069.5 and 56366.8 to, and to add Chapter 5.5 (commencing with Section 48850) to Part 27 of, the Education Code, to add Sections 7911, 7911.1, and 7912 to the Family Code, to amend Sections 1522, 1522.03, 1522.04, 1522.1, 1522.4, 1534, 1538, 1538.5, 1548, 1550, 1558, 1558.1, 1563, 1568.082, 1568.09, 1568.092, 1568.093, 1569.17, 1569.172, 1569.50, 1569.58, 1569.59, 1569.617, 1596.603, 1596.871, 1596.8713, 1596.877, 1596.885, 1596.8897, and 1596.8898 of, to add Sections 1520.1, 1520.11, 1522.02, 1522.41, 1522.42, 1522.43, 1534.5, 1568.042, 1569.1515, and 1596.952 to, the Health and Safety Code, to amend Section 11174.3 of the Penal Code, and to amend Sections 366, 727.1, 827, 10609.3, 11402, 11461, 11462, 11463, 11465, 16501.1, and 18358.30 of, to add Sections 361.21, 5867.5, 11466.21, 16501.2, and 16516.5 to, to add Chapter 2.5 (commencing with Section 16160) to Part 4 of, and to add Chapter 12.86 (commencing with Section 18987.6) to Part 6 of, Division 9 of, and to repeal Sections 11404.5 and 11467 of, the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 933, M. Thompson. Foster care.

Existing law provides that each person between the ages of 6 and 18 years, not otherwise exempted, is subject to compulsory full-time education and shall attend the public full-time day school or continuation school for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located. Existing law provides that a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district if the pupil is placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a legal commitment or placement.

This bill would impose a state-mandated local program by requiring

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 5.5 (commencing with Section 48850) is added to Part 27 of the Education Code, to read:

CHAPTER 5.5. EDUCATIONAL PLACEMENT OF PUPILS RESIDING IN LICENSED CHILDREN'S INSTITUTIONS

48850. (a) Every county office of education shall make available to agencies that place children in licensed children's institutions information on educational options for children residing in licensed children's institutions within the jurisdiction of the county office of education for use by the placing agencies in assisting parents and foster children to choose educational placements.

(b) For purposes of individuals with exceptional needs residing in licensed children's institutions, making a copy of the annual service plan, prepared pursuant to subdivision (g) of Section 56205, available to those special education local plan areas that have revised their local plans pursuant to Section 56836.03 shall meet the requirements of subdivision (a).

48852. Every agency that places a child in a licensed children's institution shall notify the local educational agency at the time a pupil is placed in a licensed children's institution. As part of that notification, the placing agency shall provide any available information on immediate past educational placements to facilitate prompt transfer of records and appropriate educational placement. Nothing in this section shall be construed to prohibit prompt educational placement prior to notification.

48854. A licensed children's institution or nonpublic, nonsectarian school, or agency may not require as a condition of placement that educational authority for a child, as defined in Section 48859 be designated to that institution, school, or agency.

48856. A local educational agency shall invite at least one noneducational agency representative that has placement responsibility for a pupil residing in a licensed children's institution to collaborate with the local educational agency in the monitoring of a placement in a nonpublic, nonsectarian school or agency.

48859. For purposes of this chapter, "educational authority" means an entity designated to represent the interests of a child for educational and related services.

SEC. 2. Section 49069.5 is added to the Education Code, to read:

49069.5. (a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(b) Upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency, a local education agency with which a pupil in foster care has most recently been enrolled that has been informed of the next educational placement of the pupil shall cooperate with the county social service or probation department to ensure that the pupil's education record is transferred to the receiving local education agency in a timely manner.

(c) Whenever a local educational agency with which a pupil in foster care has most recently been enrolled is informed of the next educational placement of the pupil, that local educational agency

shall cooperate with the county social service or probation department to ensure that educational background information for that pupil's health and educational record, as described in Section 16010 of the Welfare and Institutions Code, is transferred to the receiving local educational agency in a timely manner.

(d) Information provided pursuant to subdivision (c) of this section shall include, but not be limited to the following:

(1) The location of the pupil's records.

(2) The last school and teacher of the pupil.

(3) The pupil's current grade level.

(4) Any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

(e) Notice shall be made within five working days and information transferred within five additional working days of receipt of information regarding the new educational placement of the pupil in foster care.

SEC. 3. Section 56140 of the Education Code is amended to read:

56140. County offices shall do all of the following:

(a) Initiate and submit to the superintendent a countywide plan for special education which demonstrates the coordination of all local plans submitted pursuant to Section 56200 and which ensures that all individuals with exceptional needs residing within the county, including those enrolled in alternative education programs, including, but not limited to, alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, will have access to appropriate special education programs and related services. However, a county office shall not be required to submit a countywide plan when all the districts within the county elect to submit a single local plan.

(b) Within 45 days, approve or disapprove any proposed local plan submitted by a district or group of districts within the county or counties. Approval shall be based on the capacity of the district or districts to ensure that special education programs and services are provided to all individuals with exceptional needs.

(1) If approved, the county office shall submit the plan with comments and recommendations to the superintendent.

(2) If disapproved, the county office shall return the plan with comments and recommendations to the district. This district may immediately appeal to the superintendent to overrule the county office's disapproval. The superintendent shall make a decision on an appeal within 30 days of receipt of the appeal.

(3) A local plan may not be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.

(c) Participate in the state onsite review of the district's implementation of an approved local plan.

(d) Join with districts in the county which elect to submit a plan or plans pursuant to subdivision (c) of Section 56195.1. Any plan may include more than one county, and districts located in more than one county. Nothing in this subdivision shall be construed to limit the authority of a county office to enter into other agreements with these districts and other districts to provide services relating to the education of individuals with exceptional needs.

(e) For each special education local plan area located within the jurisdiction of the county office of education that has submitted a revised local plan pursuant to Section 56836.03, the county office shall comply with Section 48850, as it relates to individuals with

determined by the Health and Welfare Agency that such a new licensing category or categories is immediately necessary to meet the standards expressed in this section, the Health and Welfare Agency shall develop and submit proposals to the Legislature in order to take this action.

(d) The Health and Welfare Agency shall develop a proposal, including a work plan and timeframes to complete this process, and submit it to the Legislature by April 1, 1999.

(e) Any proposal or recommendation submitted pursuant to this section shall not become effective unless enacted pursuant to statute.

SEC. 76. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 77. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make changes in provisions of law relating to children placed in foster care, as well as in provisions relating to facilities licensed by the State Department of Social Services, at the earliest possible time, it is necessary that this act go into immediate effect.

BILL NUMBER: SB 1468 CHAPTERED 09/25/98

CHAPTER 846
FILED WITH SECRETARY OF STATE SEPTEMBER 25, 1998
APPROVED BY GOVERNOR SEPTEMBER 24, 1998
PASSED THE SENATE AUGUST 30, 1998
PASSED THE ASSEMBLY AUGUST 28, 1998
AMENDED IN ASSEMBLY AUGUST 26, 1998
AMENDED IN ASSEMBLY AUGUST 21, 1998
AMENDED IN ASSEMBLY JULY 19, 1998
AMENDED IN ASSEMBLY JUNE 25, 1998
AMENDED IN SENATE MAY 7, 1998
AMENDED IN SENATE MARCH 18, 1998

INTRODUCED BY Senator Rosenthal

FEBRUARY 2, 1998

An act to amend Sections 2550.3, 35120, 42238, 42238.5, 42238.7, 42238.8, 42238.9, 42243.7, 42280, 42281, 42282, 42283, 42284, 42285, 46010, 48205, 48664, 48980, 49067, 52335.2, 56836.08, 56836.10, 56836.11, 56836.12, 56836.15, and 56836.24 of, and to add Section 42289.5 to, the Education Code, and to amend Section 8880.5 of the Government Code, relating to school revenue limits, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1468, Rosenthal. School revenue limits: reporting: average daily attendance.

(1) Under existing law, each county superintendent of schools is required, as a condition of apportionment, to report certain information regarding excused absences to the Superintendent of Public Instruction by September 1, 1997.

This bill would extend the deadline for each county superintendent of schools to report this information to May 1, 1998, and September 1, 1998.

(2) Existing law authorizes each member of a governing board of a school district who actually attends all meetings to receive prescribed compensation, determined on the basis of the average daily attendance of the school district for the prior school year, for his or her services.

This bill would provide that the determination of the average daily attendance for purposes of this provision shall be increased by a school district's percentage of excused absences for the 1996-97 fiscal year.

(3) Existing law, which will become operative on July 1, 1998, changes the funding basis for school districts and county offices of education from actual attendance plus excused absences to actual attendance, without altering the funding amount received by school districts and county offices of education. Existing law bases this adjustment in funding on attendance levels and revenue limits in the 1996-97 fiscal year.

This bill would revise the provisions that establish the 1996-97 fiscal year as a base year, establish formulas whereby funding amounts received by school districts and county offices of education would be reduced to factors, and provide for the calculation of funding based on the formulas.

description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the current statutory attendance options including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The State Department of Education shall produce this portion of the notification and shall distribute it to all school districts.

(j) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.

(k) The notification shall advise the parent or guardian that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 when missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

SEC. 20. Section 49067 of the Education Code is amended to read:

49067. (a) The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

(b) The governing board of any school district may adopt regulations authorizing a teacher to assign a failing grade to any pupil whose absences from the teacher's class that are not excused pursuant to Section 48205 equal or exceed a maximum number which shall be specified by the board. Regulations adopted pursuant to this subdivision shall include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

(c) Notwithstanding the provisions of subdivision (a) of Section 49061, the provisions of this section shall apply to the parent or guardian of any pupil without regard to the age of the pupil.

SEC. 21. Section 52335.2 of the Education Code is amended to read:

52335.2. The Superintendent of Public Instruction shall calculate a revenue limit for each ROC/P in the following manner:

(a) Calculate a base revenue limit per unit of average attendance for the current fiscal year as follows:

(1) Divide the revenue limit for the prior year computed pursuant to this section by the annual units of average daily attendance funded in the prior year pursuant to subdivisions (c) and (d).

(2) Increase the amount computed in paragraph (1) by the percentage inflation adjustment specified in the Budget Act for the current fiscal year multiplied by the statewide average ROC/P revenue

costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 30.4. Section 22.5 of this bill incorporates amendments to Section 56836.08 of the Education Code proposed by both this bill and Senate Bill 1564. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 56836.08 of the Education Code, and (3) this bill is enacted after Senate Bill 1564, in which case Section 56836.08 of the Education Code, as amended by Senate Bill 1564, shall remain operative only until the operative date of this bill, at which time Section 22.5 of this bill shall become operative, and Section 22 of this bill shall not become operative.

SEC. 30.6. Section 26.5 of this bill incorporates amendments to Section 56836.15 of the Education Code proposed by both this bill and Senate Bill 1564. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 56836.15 of the Education Code, and (3) this bill is enacted after Senate Bill 1564, in which case Section 56836.15 of the Education Code, as amended by Senate Bill 1564, shall remain operative only until the operative date of this bill, at which time Section 26.5 of this bill shall become operative, and Section 26 of this bill shall not become operative.

SEC. 31. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to compile and review school attendance information in a timely manner and to make important statutory changes relating to school finance for the 1998-99 fiscal year, it is necessary that this act go into effect immediately.

EDUCATION—PUPIL RECORDS—AUTHORIZE FOSTER FAMILY AGENCIES TO ACCESS RECORDS

CHAPTER 67

A.B. No. 2453

AN ACT to add Section 49069.3 to the Education Code, relating to pupil records.

[Filed with Secretary of State July 3, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2453, Runner. Pupil records.

Existing law finds and declares that the mobility of pupils in foster care often disrupts their educational experience. Existing law authorizes parents of currently enrolled or former pupils access to any and all pupil records related to their children which are maintained by school districts or private schools.

This bill would authorize foster family agencies with jurisdiction over currently enrolled or former pupils to access records of grades and transcripts; and individualized education plans maintained by school districts or private schools of those pupils.

The people of the State of California do enact as follows:

SECTION 1. Section 49069.3 is added to the Education Code, to read:

49069.3. Foster family agencies with jurisdiction over currently enrolled or former pupils may access records of grades and transcripts, and any individualized education plans (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 maintained by school districts or private schools of those pupils.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 49062. Records; establishment, maintenance, and destruction

School districts shall establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. Pupil records shall include a pupil's health record. Such regulations shall establish state policy as to what items of information shall be placed into pupil records and what information is appropriate to be compiled by individual school officers or employees under the exception to pupil records provided in subdivision (b) of Section 49061. No pupil records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 49070.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1980, c. 1347, p. 4764, § 1.)

§ 49065. Reasonable charge for transcripts; exceptions

Any school district may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils. No charge may be made to search for or to retrieve any pupil record.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1977, c. 36, § 212, eff. April 29, 1977, operative April 30, 1977.)

§ 49067. Regulations regarding pupil's achievement

(a) The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

(b) The governing board of any school district may adopt regulations authorizing a teacher to assign a failing grade to any pupil whose * * * absences from the teacher's class that are not excused pursuant to Section 48205 equal or exceed a maximum number which shall be specified by the board. Regulations adopted pursuant to this subdivision shall include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

(c) Notwithstanding the provisions of subdivision (a) of Section 49061, the provisions of this section shall apply to the parent or guardian of any pupil without regard to the age of the pupil.

(Amended by Stats.1998, c. 846 (S.B.1468), § 20, eff. Sept. 25, 1998.)

Additions or changes indicated by underline; deletions by asterisks * * *

§ 49068. Transfer of permanent enrollment and scholarship record

Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. The State Board of Education is hereby authorized to adopt rules and regulations concerning the transfer of records.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1977, c. 36, § 213, eff. April 29, 1977, operative April 30, 1977.)

§ 49069.3. Foster family agencies; access to enrolled or former pupil records

Foster family agencies with jurisdiction over currently enrolled or former pupils may access records of grades and transcripts, and any individualized education plans (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 maintained by school districts or private schools of those pupils.

(Added by Stats.2000, c. 67 (A.B.2453), § 1.)

§ 49069.5. Pupils in foster care; transfer of records

(a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(b) Upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency, a local education agency with which a pupil in foster care has most recently been enrolled that has been informed of the next educational placement of the pupil shall cooperate with the county social service or probation department to ensure that the pupil's education record is transferred to the receiving local education agency in a timely manner.

(c) Whenever a local educational agency with which a pupil in foster care has most recently been enrolled is informed of the next educational placement of the pupil, that local educational agency shall cooperate with the county social service or probation department to ensure that educational background information for that pupil's health and educational record, as described in Section 16010 of the Welfare and Institutions Code, is transferred to the receiving local educational agency in a timely manner.

(d) Information provided pursuant to subdivision (c) of this section shall include, but not be limited to the following:

(1) The location of the pupil's records.

(2) The last school and teacher of the pupil.

(3) The pupil's current grade level.

(4) Any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

(e) Notice shall be made within five working days and information transferred within five additional working days of receipt of information regarding the new educational placement of the pupil in foster care.

(Added by Stats.1998, c. 311 (S.B.933), § 2, eff. Aug. 19, 1998.)

§ 49076.5. Peace officer record access; pupil kidnapping; offense; criminal or civil liability

(a) Notwithstanding Section 49076, each school district shall release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information.

(b) In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

(3) This section does not authorize designated peace officers to obtain any pupil record information other than that authorized by this section.

(4) The law enforcement agency requesting the information shall ensure that at no time shall any information obtained pursuant to this section be disclosed or used for any purpose other than to assist in the investigation of suspected criminal conduct of kidnapping. A violation of this paragraph shall be punishable as a misdemeanor.

(5) The designated peace officer requesting information authorized for release by this section shall make a record on a form created and maintained by the law enforcement agency which shall include the name of the pupil about whom the inquiry was made, the consent of a parent having legal custody of the pupil or a legal guardian, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the school district employee to whom the request was made, and the information that was requested.

(6) Whenever the designated peace officer requesting information authorized for release by this section does so in person, by telephone, or by some means other than in writing, the officer shall provide the school district with a letter confirming the request for pupil record information prior to any release of information.

(7) No school district, or official or employee thereof, shall be subject to criminal or civil liability for the release of pupil record information in good faith as authorized by this section.

(Added by Stats.1993, c. 561 (A.B.1539), § 1, operative July 1, 1994.)

§ 49077. Disclosure of student information; compliance with court order or lawfully issued subpoena; notification of pupil and guardian

Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The school district shall make a reasonable effort to notify the parent or legal guardian and the pupil in advance of * * * compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the * * * order.

(Amended by Stats.1996, c. 879 (A.B.1721), § 2.)

§ 49078. Service of subpoena upon a public school employee; copy of record in lieu of personal appearance

The service of a lawfully issued subpoena or a court order upon a public school employee solely for the purpose of causing him or her to produce a school record pertaining to any pupil may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency ***, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

(Amended by Stats.1996, c. 879 (A.B.1721), § 3.)

§ 76220. Regulations; establishment, maintenance, and destruction

Community college districts shall establish, maintain, and destroy student records according to regulations adopted by the Board of Governors of the California Community Colleges. Such regulations shall establish state policy as to what items of information shall be placed into student records and what information is appropriate to be compiled by individual community college officers or employees under the exception to student records provided in subdivisions (a) and (b) of Section 76210. No student records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 76232.

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

§ 76223. Reasonable charge for transcripts; exceptions

Any community college may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of students' records or (2) up to two verifications of various records of students. No charge may be made to search for or to retrieve any student record.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1977, c. 36, § 297, eff. April 29, 1977.)

§ 76225. Transfer of records; notice of rights; regulations

Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, or college or university * * * upon a request from the student * * *. However, * * * the community college, college, or university * * * from which the student is transferring may notify the student that the student's records will be transferred upon payment by the student of all fees and charges due the community college, college, or university * * *. Any community college, college, or university * * * making * * * a transfer of these records shall notify the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record.

The board of governors * * * may adopt rules and regulations concerning transfer of these records to, from, or between colleges under its jurisdiction.

(Amended by Stats.1995, c. 758 (A.B.446), § 91.)

§ 76234. Record of disciplinary action in connection with sexual assault or physical abuse; access to victim

Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assault or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. The alleged victim shall keep the results of that disciplinary action and appeal confidential.

(Added by Stats.1989, c. 593, § 3.)

§ 76244. Disclosure of student information; compliance with court order or lawfully issued subpoena; notification of pupil and guardian

Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The community college district shall make a reasonable effort to notify the student in advance of * * * compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the * * * order.

(Amended by Stats.1996, c. 879 (A.B.1721), § 4.)

§ 76245. Service of subpoena upon a community college employee; copy of record in lieu of personal appearance

The service of a lawfully issued subpoena or a court order upon a community college employee solely for the purpose of causing * * * the employee to produce a school record pertaining to any student may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency * * * or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

(Amended by Stats.1995, c. 758 (A.B.446), § 95; Stats.1996, c. 879 (A.B.1721), § 5.)

§ 76246. Regulations; orderly implementation of this chapter

The Board of Governors of the California Community Colleges shall adopt appropriate rules and regulations to insure the orderly implementation of this chapter. A community college district governing board may adopt rules and regulations which are not inconsistent with this chapter or with those adopted by the board of governors in order to ensure the orderly implementation of this chapter.

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

STATE OF CALIFORNIA
GRAY DAVIS, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

Exhibit B

July 8, 2003

Mr. Michael H. Fine
Riverside Unified School District
3380 14th Street
Riverside, CA 92501

Mr. Keith Gmeinder
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Jerry R. Patton
Assistant Superintendent/Vice President
Palomar Community College District
1140 West Mission Road
San Marcos, CA 92069

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. Keith Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mr. Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Thomas J. Nussbaum
Chancellor
California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

And: Interested Parties
(see enclosed mailing list)

Re: Notice of Complete Test Claim Filing and Schedule for Comments – *Student Records*; 02-TC-34

On June 23, 2003, a test claim was filed on the above named program by SixTen and Associates, representing Riverside Unified School District and Palomar Community College District, Co-Claimants. Following initial review, the Commission staff found the test claim to be complete. The Commission is now requesting state agencies and interested parties to comment on the test claim as specified in the enclosed notice.

Please contact Nancy Patton at (916) 323-8217 if you have any questions.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

Enclosures:
Notice of Complete Test Claim Filing and Schedule for Comments
Copy of Test Claim (state agencies only)
Mailing List

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245,and 76246 as added and amended by Statutes 1975, Chapter 816; Statutes 1976, Chapter 1297; Statutes 1980, Chapter 1347; Statutes 1983, Chapter 498; Statute 1989, Chapter 593; Statutes 1993, Chapter 561; Statutes 1995, Chapter 758; Statutes 1996, Chapter 879; Statutes 1998, Chapter 311; Statutes 1998, Chapter 846; and Statutes 2000, Chapter 67 Filed on June 23, 2003 By the Riverside Unified School District and the Palomar Community College District, Co-Claimants	No. 02-TC-34 ***Student Records*** NOTICE OF COMPLETE TEST CLAIM FILING AND SCHEDULE FOR COMMENTS (Gov. Code § 17500 et seq.; Cal. Code Regs., Tit. 2, §§ 1183, subd.(g) & 1183.02)

TO: **Riverside Unified School District**
Palomar Community College District
Department of Finance
California Department of Education
Chancellor's Office, California Community Colleges
State Controller's Office
Interested Parties

On June 23, 2003, the Riverside Unified School District and the Palomar Community College District filed a test claim on the above-described statutes and executive orders alleging a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim is complete. The test claim will be heard and determined by the Commission on State Mandates pursuant to article XIII B, section 6, Government Code section 17500 et seq., and case law. The procedures for hearing and determining this claim are prescribed in the Commission's regulations, California Code of Regulations, title 2, chapter 2.5, section 1181, et seq.

COMMENT PERIOD

The key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the

Government Code?

- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

State Agency Review of Test Claim - State agencies are requested to analyze the test claim merits and to file written comments within 30 days, or no later than **August 8, 2003**. Requests for extensions of time may be filed in accordance with sections 1183.01, subdivision (c) and 1181.1, subdivision (g) of the regulations.

Claimant Rebuttal - The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.03 of the regulations. The rebuttal is due 30 days from the actual service date of written comments from any state agencies.

Mailing Lists - Under section 1181.2 of the regulations, the Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy. Any written material filed with the Commission on this claim shall be simultaneously served on the other parties listed on the mailing list provided by the Commission.

Consolidating Test Claims - Pursuant to Commission regulations, the executive director may consolidate part or all of any test claim with another test claim. See sections 1183.05 and 1183.06 of the regulations.

ADDITIONAL FILINGS ON THE SAME STATUTE OR EXECUTIVE ORDER

Under section 1183, subdivision (i) of the regulations, more than one test claim on the same statute or executive order may be filed with the Commission. The test claim must be filed within 60 days of the date the first test claim was filed. Claimants may designate a single claimant within 90 days from the date the first test claim was filed. If the Commission does not receive notice from the claimants designating a lead claimant, the executive director will designate the claimant who filed the first test claim as the lead claimant.

INFORMAL/PREHEARING CONFERENCE

An informal conference or prehearing conference may be scheduled if requested by any party. See sections 1183.04 and 1187.4 of the regulations.

HEARING AND STAFF ANALYSIS

A tentative hearing date for the test claim will be set when the draft staff analysis of the claim is being prepared. At least eight weeks before a hearing is conducted, the draft staff analysis will be issued to parties, interested parties, and interested persons for comment. Comments are due at least five weeks prior to the hearing or on the date set by the Executive Director, pursuant to section 1183.07 of the regulations. Before the hearing, a final staff analysis will be issued.

Dismissal of Test Claims - Under section 1183.09 of the regulations, test claims may be dismissed when postponed or placed on inactive status by the claimant for more than one year. Before dismissing a test claim, the Commission will provide 60 days notice and opportunity for other parties to take over the claim.

Parameters and Guidelines - If the Commission determines that a reimbursable state mandate exists, the claimant is responsible for submitting proposed parameters and guidelines for reimbursing all eligible local entities. See section 1183.1 of the regulations. All interested parties and affected state agencies will be given an opportunity to comment on the claimant's proposal before consideration and adoption by the Commission.

Statewide Cost Estimate - The Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of a test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Dated: July 8, 2003

Paula Higashi

PAULA HIGASHI, Executive Director

EXHIBIT C

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

September 15, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

This letter is to inform you that the Department of Finance (Department) has performed an initial review of the test claim entitled Student Records, 02-TC-34, filed by Riverside Unified School District and Palomar Community College District.

The claimants assert on page 2 of the claim that, "Prior to January 1, 1975, there were no statutes, code sections or regulations which required school districts to search and retrieve, furnish or forward student records as hereinafter described." However, our initial review reveals that several of the activities for which State reimbursement is sought were required by state and/or federal law in 1974 or prior. For example, on Page 27 of the Test Claim, Item C regarding reimbursable activities states "Pursuant to Education Code Section 49065, the furnishing of (1) up to two transcripts of former pupils records or (2) up to two verification of various records of former pupils, and (3) for searching and retrieving pupil records when transcripts or verifications are requested." Yet, Education Code, section 1037, as reflected on January 1, 1974 states "The governing board of any school district may make a charge for furnishing transcripts of former pupils' records in excess of two copies, and for more than two verifications of various records of former pupils. Such a charge shall be fifty cents ($0.50) or an amount not to exceed the cost of rendering the service, whichever is the lessor."

The regulations governing test claim filing, Title 2, California Code of Regulations, Section 1183, subdivision (d)(3)(A), require the claimant to include a written narrative that includes a detailed description of the activities required under prior law or executive order. The Department asserts that claimants have not included this information in their test claim, therefore the Department questions the completeness of the Test Claim. Accordingly, we request that the Commission direct the claimants to accurately provide the information required by the regulations. The Department will provide more detailed comments once a complete test claim is received.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 8, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Michael Wilkening, Principal Program Budget Analyst, at (916) 445-0328 or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CSM--02-TC-34

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Chapter No., Statutes of , (,) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

at Sacramento, CA

Michael Wilkening

PROOF OF SERVICE

Test Claim Name: Student Records
Test Claim Number CSM-02-TC-34

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On September 8, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

B-8
State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

E-8
Department of Education
Fiscal and Administrative Services Division
Attention: Gerry Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Riverside Unified School District
Attention: Michael H. Fine
3380 14th Street
Riverside, CA 92501

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

California Community Colleges
Attention: Thomas Nussbaum
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Palomar Community College District
Attention: Jerry R. Patton
1140 West Mission Road
San Marcos, CA 92069

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 8, 2003, at Sacramento, California.

Jennifer Nelson

SixTen and Associates
Mandate Reimbursement Services

EXHIBIT D

KENNETH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

October 10, 2003

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-34
Riverside Unified School District
Palomar Community College District
Student Records

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated September 15, 2003, to which I now respond on behalf of the test claimant.

Although none of the objections generated by DOF are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

1. The Comments of the DOF are Incompetent and Should be Excluded

Test claimant objects to the Comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DOF comments do not comply with this essential requirement.

2. Statement Concerning Prior Law is Correct

DOF cites the test claimants' statement that "Prior to January 1, 1975, there were no statutes, code sections or regulations which required school districts to search and retrieve, furnish or forward student records as hereinafter described" and then states that its review reveals that "several of the activities for which State reimbursement is sought were required by state and/or federal law in 1974 or prior". In support of its claim of "several activities", DOF argues that the claiming of Education Code Section 49065 is precluded by section 1037 of the 1959 Education Code. As will be shown, test claimants' statement is correct.

Section 1037 of the 1959 Education Code provided:

> "The governing board of any school district may make a charge for furnishing transcripts of former pupils' records in excess of two copies, and for more than two verifications of various records of former pupils. Such a charge shall be fifty cents ($0.50) or an amount not to exceed the cost of rendering the service, whichever is the lesser."

Code Section 1037 is silent about copies less than two, is permissive as to copies in excess of two and allows a charge for rendering the service.[1]

Chapter 816, Statutes of 1975, Section 4, added Education Code Section 10936 (effective January 1, 1976), to provide that:

> "Any school district may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils."

Section 10936, for the first time, prohibits any charge for furnishing up to two transcripts or up to two verifications of various records of former pupils.

Chapter 1297, Statutes of 1976, Section 4.5, amended Education Code Section 10936 (effective January 1, 1977) to provide, for the first time, that no charge may be made to search for or to retrieve any pupil record:

> "Any school district may make a reasonable charge in an amount not to

[1] Section 1037 of the 1959 Education Code was repealed by Chapter 1010, Statutes of 1976, effective April 10, 1977.

exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils. No charge may be made to search for or to retrieve any pupil record."

Therefore, test claimants' statement that, "Prior to January 1, 1975, there were no statutes, code sections or regulations which required school districts to search and retrieve, furnish or forward student records as hereinafter described" is a correct statement of the law.

Therefore, test claimants' request (at page 27 of the test claim) for reimbursement for the costs of "furnishing of (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils, and (3) for searching and retrieving pupil records when transcripts or verifications are requested" is a valid claim for reimbursement.

Therefore, the request of DOF that the Commission direct the claimants to provide any additional information should be denied and DOF should be denied an opportunity to offer any additional comments.

CERTIFICATION

I certify by my signature below, under penalty of perjury, under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Student Records
CLAIMANT: Riverside Unified School District and
Palomar Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of October 10, 2003, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Sacramento, CA 95814
FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 10/10/03, at San Diego, California.

Diane Bramwell

Original List Date: 6/26/2003
Last Updated:
Last Print Date: 08/18/2003
Claim Number: 02-TC-34
Issue: Student Records

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Claimant Representative
Tel: (858) 514-8605
Fax: (858) 514-8645

Mr. Michael H. Fine
Riverside Unified School District
3380 14th Street
Riverside, CA 92501

Claimant
Tel: (909) 788-1020
Fax:

Ms. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Tel: (916) 646-1400
Fax: (916) 646-1300

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

Tel: (909) 672-9964
Fax: (909) 672-9963

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730
Tel: (866) 481-2642
Fax: (866) 481-5383

Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816
Tel: (916) 445-8757
Fax: (916) 323-4807

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814
Tel: (916) 445-0554
Fax: (916) 327-8306

Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814
Tel: (916) 445-8913
Fax: (916) 327-0225

Mr. Steve Smith
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670
Tel: (916) 669-0888
Fax: (916) 669-0889

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA ,92103-8363
Tel: (619) 725-7565
Fax: (619) 725-7569

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816
Tel: (916) 454-7310
Fax: (916) 454-7312

Mr. Jerry R. Patton
Palomar Community College District
1140 West Mission road
San Marcos, CA 92069
Claimant
Tel:
Fax:

Mr. Thomas J. Nussbaum (G-01)
California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814-6549
Tel: (916) 445-2738
Fax: (916) 323-8245

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
[redacted] Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
HTTP://WWW.CCCCO.EDU

March 16, 2004

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Test Claim: Student Records, 02-TC-34

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above test claim in light of the following questions addressing key issues before the Commission:

- Do the provisions [Ed. Code, §§ 76220, 76223, 76225, 76234, 76244, 76245 and 76246] impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

Claimant challenges a number of statutes that appear in chapter 1.5 of part 47 of division 7 of title 3 of the Education Code, governing the treatment of student records by community college districts. Issues specific to each statute will be discussed below, but as a general matter it is important to note that most of these provisions were originally enacted by Senate Bill 182 (Stats. 1975, ch. 816) which was designed to bring California law into conformity with the Federal Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. § 1232g). Section 76200 confirms this by stating:

> "It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 regarding the confidentiality of student records in order to ensure the continuance of federal education funds to public community colleges within the state. . . ."

Moreover, Senate Bill 182 contained an uncodified provision, section 8 of the bill, which specifically declared that:

> "There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because this act merely affirms for the state that which has been declared existing law or regulation through action by the federal government."

Thus, much of this claim should be denied because the challenged provisions are generally necessary to implement federal law.

Education Code section 76220

Claimant alleges that mandated costs are imposed by Education Code section 76220, which provides:

> "Community college districts shall establish, maintain, and destroy student records according to regulations adopted by the Board of Governors of the California Community Colleges. Such regulations shall establish state policy as to what items of information shall be placed into student records and what information is appropriate to be compiled by individual community college officers or employees under the exception to student records provided in subdivisions (a) and (b) of Section 76210. No student records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 76232."

Although section 76220 requires districts to establish, maintain, and destroy student records in accord with regulations adopted by the Board of Governors, the Board's regulations do not actually require districts to either establish or destroy student records. California Code of Regulations, title 5, section 59023 does require that, if a district creates certain types of student records, it must maintain them. Also, when a district decides to destroy nonpermanent student records it must follow procedures set forth in title 5, sections 59027-59029. However, a district's initial decision that a record should be created or destroyed is voluntary and the California Supreme court has confirmed that a local agency may not make out a claim for mandated costs if the action triggering the requirement is voluntary. (*Department of Finance v. Commission on State Mandates* (*Kern High School*) (2003) 30 Cal.4th 727, hereinafter referred to as "*Kern High School.*")

The requirement for permanent maintenance of student records applies only to those records related to enrollment and scholarship. (Cal. Code Regs., tit. 5, § 59023(d)(1).) This requirement dates back to the period when junior colleges were governed by the State Board of Education which adopted former title 5, section 3016, which is substantially similar to present section 59023, at least as early as March 19, 1960.

One of the major reasons a college is required to retain such student records is to substantiate claims for state apportionment in the event of an audit. (Cal. Code Regs., tit. 5, § 58030.) Section 58030 was adopted pursuant to former Education Code section 76300 which required records of student attendance to be kept in accord with regulations adopted by the Board of Governors. This requirement dates back at least to Former Education Code section 6801, which was added by Statutes 1951, chapter 228.

The rules governing the destruction of student records set forth in title 5, sections 59027-59029 were originally adopted by the Board of Governors in 1976 based on the authority of former Education Code section 72603. Section 72603 in turn derived from former Education Code section 1034 which was added by Statutes 1963, chapter 629. Those statutes authorized the State Board of Education, and later the Board of Governors, to adopt regulations specifying the manner in which student records are to be destroyed.

Therefore, it is clear that the requirement for colleges to maintain certain student records and the restrictions on methods of destroying nonpermanent records existed in law long before January 1, 1975.

Finally, *Kern High School* pointed out that even if costs are incurred, they may be permissibly payable from funds that have already been obtained from the state. *(Kern High School, supra,* 30 Cal.4th 727, at 747.) Thus, the cost of maintaining student attendance records is incurred in order to obtain state funding that may then be used to cover these expenses.

For the above reasons, the Claim related to education Code section 76220 should be denied.

Education Code section 76223
Claimant alleges that Education code section 76223 imposes mandated costs. Section 76223 provides:

> "Any community college may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any student record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of students' records or (2) up to two verifications of various records of students. No charge may be made to search for or to retrieve any student record."

The regulations adopted by the U.S. Department of Education to implement FERPA contain a substantially similar provision in 34 Code of Federal Regulations section 99.11 which states:

> "§ 99.11 May an educational agency or institution charge a fee for copies of education records?
>
> (a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.
>
> (b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student."

The only difference between Education Code section 76223 and 34 Code of Federal Regulations section 99.11 is that the federal requirement would involve a determination of whether a charge would effectively preclude a student or parent from accessing a record, whereas the state law

guarantees two free transcripts or records verifications. The requirement to provide two free transcripts or verifications appears to date back to former Education Code section 25422.8, which was enacted by Statutes 1972, chapter 1037. Since this requirement was in place prior to January 1, 1975, it cannot serve as the basis for a mandate claim.

Moreover, if there were no absolute ban on charging for the first two transcripts, the federal regulation would require districts to somehow individually assess whether each student could afford to pay a fee. Claimant would need to show that the cost of providing the two free transcripts exceeds the cost it would otherwise incur for compliance with the federal requirement.

For these reasons, the claim related to section 76223 should be denied.

Education Code section 76225

Claimant alleges that Education Code section 76225 imposes mandated costs. Section 76225 provides:

> "Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy thereof shall be transferred by the former community college, or college or university upon a request from the student. However, the community college, college, or university from which the student is transferring may notify the student that the student's records will be transferred upon payment by the student of all fees and charges due the community college, college, or university. Any community college, college, or university making a transfer of these records shall notify the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record.
>
> The board of governors may adopt rules and regulations concerning transfer of these records to, from, or between colleges under its jurisdiction."

The federal regulations implementing FERPA give students a right to inspect their records (34 C.F.R. § 99.10) and to receive a copy of such records (34 C.F.R. § 99.11). A student transferring to another college or university could obtain a copy of his or her records from the college he or she has been attending and then give them to the new institution, but this is impractical since the receiving institution would have no assurance that the student had not tampered with the records. Section 76225 solves this problem by allowing a student to request that his or her records be sent directly to the other institution. This does not impose an additional cost on districts since section 76223 already authorizes charging a fee to "furnish" copies of student records and this office has held that such a charge may include the actual cost of mailing individual student records.

The remaining requirements of section 76225 (providing the student with a copy of the record and the right to a hearing to challenge its content) are mandated by federal law. Again, 34 Code of Federal Regulations section 99.11 guarantees a student the right to a copy of his or her records and 34 Code of Federal Regulations section 99.21 requires a hearing in the event the student wishes to challenge the content of those records.

For the above reasons, the Claim related to Education Code section 76225 should be denied.

Education Code section 76234

Claimant alleges that Education Code section 76234 imposes mandated costs. Section 76234 provides:

> "Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assualt [spelling error in statute] or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. The alleged victim shall keep the results of that disciplinary action and appeal confidential."

Section 76234 was enacted by Senate Bill 1546 (Stats. 1989, ch. 593). The Legislative Counsel's Digest for SB 1546 notes that "The notification requirements imposed by this bill on community colleges would impose a state-mandated local program" and section 5 of the bill provided that,

> "Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund."

Thus, it appears that the enactment of section 76234 by SB 1546 probably did impose some minimal mandated costs that would be reimbursable.

However, that was true only for a brief period. Federal law now requires each institution receiving federal financial assistance (which includes all community college districts) to include a policy which ensures that "both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault." (20 U.S.C. § 1092(f)(8)(B)(iv)(II).) It appears that this provision was added by Public Law 102-325 (also known as the Higher Education Amendments of 1992), which became effective October 1, 1992. Thus, any claim for reimbursement pursuant to Education Code section 76234 would only be valid for the period between January 1, 1990 (when SB 1546 became effective) and October 1, 1992, when this same requirement was imposed by federal law.

Since this claim relates to costs incurred by the Claimant during fiscal year 2001-02, it must be rejected.

Education Code section 76244

Claimant alleges that Education Code section 76244 imposes mandated costs. Section 76244 provides:

> "Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The community college district shall make a reasonable effort to notify the student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order."

Of course, community college districts, like all other organizations, must comply with lawfully issued subpoenas and court orders. (See generally, Code of Civil Procedure sections 1985 et seq. and particularly sections 1985.3, 1991, and 2020 of the Code of Civil Procedure.) There is no reimbursable mandate resulting from a law of general application, laws which, to implement a state policy, do not impose "unique requirements on local governments and . . . apply generally to all residents and entities in the state" and thus do not impose a new program or higher level of service upon the districts. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57.) The only unique requirement of section 76244 is that the community college must make a reasonable effort to notify the student in advance of compliance with a subpoena or court order. However, this requirement is imposed by the FERPA regulations. (34 C.F.R. § 99.31(a)(9)(ii).)

For these reasons, the claim regarding section 76244 should be denied.

Education Code section 76245

Claimant alleges that Education code section 76245 imposes mandated costs. Section 76245 provides:

> "The service of a lawfully issued subpoena or a court order upon a community college employee solely for the purpose of causing the employee to produce a school record pertaining to any student may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof."

As noted above, community college districts are subject to the law of general application set forth in Code of Civil Procedure sections 1985 et seq. requiring compliance with subpoenas. Section 76245 imposes no unique mandates on community college districts and no reimbursement is required. (*County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56-57.) Indeed, the only real effect of section 76245 is to clarify that a district may comply with a subpoena for student records by producing those records rather than by sending the custodian of records to make a personal appearance and bring the records. If a district wishes to take advantage of this option, it does so voluntarily and is not entitle to reimbursement for such costs. (*Kern High School, supra,* 30 Cal.4th 727.)

For these reasons, the claim related to section 76245 should be denied.

Education Code section 76246

Claimant alleges that Education code section 76246 imposes mandated costs. Section 76246 provides:

> "The Board of Governors of the California Community Colleges shall adopt appropriate rules and regulations to insure the orderly implementation of this chapter. A community college district governing board may adopt rules and regulations which are not inconsistent with this chapter or with those adopted by the board of governors in order to ensure the orderly implementation of this chapter."

A careful reading of section 76246 reveals that it does not require community college districts to take any actions whatsoever. The first sentence directs the board of Governors to adopt implementing regulations but does not mention community college districts at all. The second sentence merely states that districts "may" adopt local rules and regulations, but it does not require that they do so. A local agency may not make out a claim for mandated costs if the action triggering the requirement is voluntary. (*Kern High School, supra,* 30 Cal.4th 727.)

Therefore, the claim related to section 76245 should be denied.

We hope that the foregoing information is useful to the Commission.

Sincerely,

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

Six Ten and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

April 23, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-34
Riverside Unified School District
Palomar Community College District
Student Records

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 16, 2004, to which I now respond on behalf of the test claimants.

A. The Comments of CCC are Incompetent and Should be Excluded

Test claimants object to the comments of CCC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Furthermore, the test claimants object to any and all assertions or representations of fact made in the response since CCC has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

In addition, CCC has cited federal statutes and regulations without attaching copies thereof in violation of Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2), which requires that written responses, opposition or recommendations on the test claim shall contain:

> "A copy of relevant portions of...federal statutes, and executive orders that may impact the alleged mandate...unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified..."

The comments of CCC do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be included in the Staff's analysis.

B. The Test Claim Activities Exceed Those Required by "FERPA"

CCC states as a "general matter" it is important to note that "most of these provisions" were originally enacted to bring California law into conformity with the Federal Education Rights and Privacy Act ("FERPA"; 20 U.S.C. § 1232g).[1] CCC does not offer any guidance as to which provisions of the test claim legislation are "most of these provisions", nor does CCC direct us to which parts of "FERPA" are arguably controlling.

A close reading of section 1232g reveals that it does not attempt to cover the additional

[1] Since CCC has not complied with the Title 2 Regulations that require a copy of this federal statute be provided, a copy is attached hereto as Exhibit "A".

activities alleged in the test claim[2], such as:

> (1) To establish and implement policies and procedures, and periodically update those policies and procedures, for the searching, retrieving and furnishing student records;
>
> (2) Establishing, maintaining, and destroying student records according to regulations adopted by the Board of Governors;
>
> (3) Providing, free of charge, up to two transcripts of students' records or up to two verifications of various records of students; and for searching or retrieving any student records when transcripts or verifications are required;
>
> (4) Whenever a student transfers from one community college to another, transferring appropriate records or copies and notifying the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record;
>
> (5) Whenever there is included in any student record information concerning any disciplinary action taken in connection with any alleged sexual assault or physical abuse, or any conduct that threatens the health and safety of the alleged victim, informing the alleged victim of the results of any disciplinary action by the community college and the results of any appeal;
>
> (6) Making a reasonable effort to notify a student in advance of compliance with a lawfully issued subpoena;
>
> (7) Upon service of a lawfully issued subpoena or a court order solely to produce a school record regarding any student, either personally appearing as a witness or submitting to the court a copy of the record requested accompanied by an affidavit;
>
> (8) Complying with appropriate rules and regulations adopted by the Board of Governors of the California Community Colleges to insure the orderly implementation of this chapter.

---

[2] For a more complete description of the test claim community college district activities alleged, refer to the test claim at pages 30-32.

The test claim legislation and executive orders mandate costs which exceed those required by 20 U.S.C. § 1232g. Government Code Section 17556, subdivision (c)

C. Legislative Exculpatory Statements are not Controlling.

CCC next quotes section 8 of Chapter 817, Statutes of 1975 which states:

> "There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because this act merely affirms for the state that which has been declared existing law or regulation through action by the federal government."

The findings of the Legislature as to whether any section constitutes a state mandate are irrelevant. The Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce section 6 of the California Constitution, article XIII B. Thus, the statutory scheme contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists. *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817-1818; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818-819

Legislative disclaimers, findings and budget control language are no defense to reimbursement. These efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly. Carmel Valley Fire Protection District v. State of California (1987) 190 Cal.App.3d 521, 541-544 (Rejecting nearly identical language at page 542)

D. CCC's Interpretation of "*Kern*" is Incorrect

On several occasions, CCC cites *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (hereinafter, "*Kern*") as authority for its conclusion that several of the test claims mandated activities are "voluntary" with statements such as "...The California Supreme Court has confirmed that a local agency may not make out a claim for mandated costs if the action triggering the requirement is voluntary."[3] "*Kern*" made no such finding!

[3] Comments of CCC, at page 2

The controlling case law on the subject of non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II*).

(a) *Sacramento II* Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(b) *Sacramento I* Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566

so coercive as to constitute a "mandate of the federal government" under Section 9(b).[4]

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion."

(c) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to "compulsion."

(d) *Sacramento II* "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I*, the court explained:

> "If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

> "However, we cannot imagine the drafters and adopters of article XIII B

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[4] Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

> intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

> "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

(e) The "Kern" Case Did Not Change the Standard

In *"Kern"*, the supreme court made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

> "For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6,[5] because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Opinion at 736, emphasis

[5] This *Kern* disclaimer that "we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement" refutes CCC's interpretation of *Kern* that legal compulsion is necessary for a finding of a mandate.

in the original, underlining added)

Therefore, "carrot and stick" situations must still be determined on a case by case basis. The test for determining whether there is a mandate is whether compliance with the test claim legislation is a matter of true choice, that is whether participation is truly voluntary. *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582

The process for such a determination is found in *Sacramento II*, that is the determination in each case must depend on such factors as the nature and purpose of the program; whether its design suggests an intent to coerce; when district participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." ("*Sacramento II*", at page 76) CCC has not presented any comments of the test claim legislation using this required analysis.

E. Education Code Section 76220

CCC correctly cites Education Code Section 76220 which states, in part:

> "Community college districts shall establish, maintain and destroy student records according to regulations adopted by the Board of Governors..." (Emphasis supplied)

CCC then argues that "...the Board's regulations do not *"actually"* require districts to either establish or destroy student records" and that "a district's initial decision that a record should be created or destroyed is voluntary." (Emphasis supplied)

CCC's argument flies in the face of the clear language of the section 76220.

As to the "maintenance" of student records, CCC cites Title 5, California Code of Regulations Section 59023(d)(1) which states:

> "The original of each of the records listed in this Section...shall be retained indefinitely...
> (d) The following student records:
> (1) the records of enrollment and scholarship for each student..."

This Title 5 regulation is clearly is one of the Board regulations adopted pursuant to

Education Code Section 76220l

Attempting to avoid the obvious, CCC then, by way of its unsworn and unverified assertion, states "[T]his requirement dates back to the period when junior colleges were governed by the State Board of Education which adopted former title 5, section 3016, which is '*substantially similar*' to present section 59023, at least as early as March 19, 1960." (Emphasis supplied) Of course, CCC does not attempt to support this bald assertion by attaching copies, or even quoting the exact language of the alleged former section 3016, which no longer appears in Title 5. Until it does so, the argument must be disregarded.

In response to the test claim requirement to establish, maintain and destroy student records, CCC states that a requirement to keep records of student attendance "dates back at least to Former (sic) Education Code section 6801, which was added by Statutes 1951, chapter 228."

CCC's statutory history is incorrect. Former section 6801 pertained to the education of physically handicapped minors. The correct reference is to former section 10951 which required attendance to be recorded and kept according to regulations prescribed by the State Board of Education. Section 10951 was recodified and renumbered as section 76300 by Chapter 1010, Statutes of 1976, Section 2. The 1976 version was repealed by Chapter 470, Statutes of 1981, Section 125 and replaced by Section 126, again as section 76300. The 1981 version was repealed by Chapter 1372, Statutes of 1990, Section 445. Section 679 of Chapter 1372/90 added a new section 84500 which continues to the present time and still requires attendance to be recorded and kept according to rules and regulations prescribed by the board of governors.

More importantly, the pre-1975 requirement to maintain attendance records does not prevent a finding of a mandate for community college districts after 1974 to establish, maintain, and destroy student records which shall establish state policy as to what items of information shall be placed into student records and what information is appropriate to be compiled, and that no student records shall be destroyed except pursuant to such regulations. Therefor, section 76220 requires a higher level of service.

In response to the test claim requirement to destroy student records according to regulations adopted by the Board of Governors, CCC cites pre-1975 former section 1034 which stated that districts "may destroy" records of a district in accordance with regulations of the Superintendent of Public Instruction which he was "authorized" to adopt. Note that this section pertained to district records and not student records; that

the districts were not required to destroy the records; and that the Superintendent was only authorized to adopt regulations.

Education Code Section 76220 which requires districts to destroy student records according to regulations adopted by the Board of Governors was enacted post-1974 by Chapter 816, Statutes of 1975, Section 7.[6] Therefore, CCC is incorrect when it claims that the applicable regulations[7] were originally adopted in 1976 "based on the authority of former Education Code section 72603." These regulations were adopted in 1976 based upon the authority of test claim section 76220. And, regardless of which Education Code section was the authority for the regulations, they were adopted in 1976, which is admitted by CCC.

As its last gasp argument opposing section 76220, CCC cites "*Kern*" for the proposition that the test claim costs "may be permissibly payable from funds that have already been obtained from the state." CCC has its facts of "*Kern*" badly mistaken:

> "Real parties in interest - - two public school districts and a county (hereafter claimants - - participate in various education-related programs that are funded by the state and, in come instances, by the federal government. Each of these underlying funded programs in turn requires participating public school districts to establish and utilize specified school councils and advisory committees. Statutory provisions enacted in the mid-1990's require that such school councils and advisory committees provide notice of meetings, and post agendas for those meetings. (citations) We granted review to determine whether claimants have a right to reimbursement from the state for their costs in complying with these statutory notice and agenda requirements." (Opinion, at pages 730-731, underlining supplied to show that the funding referred to was provided to the underlying education-related programs.)

At page 731 of the opinion, the court summarized its later holdings:

> "...we conclude that as to *eight* of the nine underlying funded programs here as issue, claimants have not been legally compelled to

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[6] The requirement was originally section 25430.2, which was recodified and renumbered as section 76220 by Chapter 1010, Statutes of 1976, Section 2

[7] Title 5, California Code of Regulations Sections 59027-59029

> participate...,assuming (without deciding) that claimants have been legally compelled to participate in *one* of the nine programs, we conclude that claimants have nonetheless have no entitlement to reimbursement from the state for such (notice and agenda) expenses,[8] because they have been free at all relevant times to use funds provided by the state for that (underlying education-related) program to pay required program expenses - - including the notice and agenda costs here at issue," (Emphasis in the original, underlining and parenthetical clarification added.)

It is only in the context of those facts, that the court held:

> "We therefore conclude that because claimants are and have been free to use funds from the (underlying education-related) Chacon-Moscone Bilingual-Bicultural Education program to pay required program expenses (including the notice and agenda costs here at issue), claimants are not entitled under article XIII B, section 6, to reimbursement from the state for such expenses." (Opinion at page 748, parenthetical notation in the original, underlining added.)

Therefore, "*Kern*" is factually distinguishable. Education Code Section 76200 is the underlying "program" and no funding is provided. The implementing sections, Title 5, California Code of Regulations Sections 59027-59029 provide no funding either. Here there are no "funds that have already been obtained from the state."

F. Education Code Section 76223

CCC claims that a regulation adopted by the U.S. Department of Education to implement FERPA contains a substantially similar provision to Education Code Section 76223.

CCC refers to 34 Code of Federal Regulations, section 99.11,[9] which permits an educational agency or institution to charge a fee for a copy of an education record made for the parent or eligible student, except if the imposition of a fee effectively

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[8] The court found these costs to be rather modest. (Opinion, at page 747)

[9] Since CCC has not complied with the Title 2 Regulations that require a copy of these regulations be provided, a copy is attached hereto as Exhibit "B".

prevents a parent of student from exercising their right to inspect and review those records. Education Code Section 76233 provides that a community college may only make a reasonable charge for furnishing more than two copies of any student record or verification of records, without reference to the financial status of a parent or student. Therefore, Section 76233 provides for an increased level of service.

G. Education Code Section 76225

The test claim alleges:

> "Pursuant to Education Code Section 76225, whenever a student transfers from one community college to another, or to a public or private institution of postsecondary education within the state, transferring appropriate records or copies and notifying the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record." (Test Claim, page 31, lines 2-6)

In response, CCC states that sections 99.10 and 99.11 of 34 C.F.R. already give students the right to inspect and receive a copy of their records and that giving the transferring student copies to be delivered to his or her new school is "impractical". This does not obviate the clear mandate that the community college transfer these records to the new school. The additional statement by CCC that "this office has held that such a charge may include the actual cost of mailing" is just another unsworn and unverified statement that needs to be disregarded.

H. Education Code Section 76234

The test claim alleges:

> "Pursuant to Education Code Section 76234, whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, or any conduct that threatens the health and safety of the alleged victim, informing the alleged victim of the results of any disciplinary action by the community college and the results of any appeal." (Test Claim, page 31, lines 7-12)

CCC contends that an identical provision appears in 20 U.S.C. § 1092(f)(8)(B)(iv)(II).[10] This section provides:

> "Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall develop and distribute as part of the report described in paragraph (1) a statement of policy (which) shall address procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that both the accuser and accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault."

The section is conditioned upon participation "in any program under this subchapter and part C of subchapter I of chapter 34 of title 42" which has not been determined, even though CCC's unsworn and unverified statement states the law is applicable to each institution receiving federal assistance. Without further discussion of this assertion[11], Education Code Section 76234 additionally includes reports of "physical abuse, or any conduct that threatens the health and safety of the alleged victim" which far exceeds the purported federal requirement to inform the outcome of proceedings alleging only a sexual assault. Section 76234, therefore, mandates a higher level of service.

I. Education Code Section 76244

CCC argues that community college districts, like all other organizations, must comply with lawfully issued subpoenas and courts orders and there is no reimbursable mandate resulting from a law of general application.

Section 76244 provides:

> "Information concerning a student shall be furnished in compliance with a

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[10] Since CCC has not complied with the Title 2 Regulations that require a copy of this statute be provided, a copy is attached hereto as Exhibit "C".

[11] "This subchapter" refers to Subchapter IV of Chapter 29 of Title 20 which includes seven different parts. Part C of subchapter 1 of Chapter 34 of Title 42 contains nine different programs. Without further citation of authority for the statement of CCC, it is impossible to reply to this statement.

court order or a lawfully issued subpoena. The community college district shall make a reasonable effort to notify the student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order."

The test claim, as to Section 76244, does not allege any compliance issues. It alleges notification issues. Since all other organizations and individuals are not required by section 76244 to notify anyone, it is not a law of general application.

The test claim alleges:

> "Pursuant to Education Code Section 76244, making a reasonable effort to notify a student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order." (Test claim, page 31, lines 13-16)

CCC also argues that, since 34 C.F.R. § 99.31(a)(9)(ii) already contains a requirement to make a reasonable effort to notify a student in advance, the requirement is the result of a federal mandate. Section 99.31 provides, in part:

> "An educational agency or institution may disclose personally identifiable information pursuant to a judicial order or lawfully issued subpoena. (provided)...the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action..."

Therefore, under the federal statute disclosure is required only of "personally identifiable information." Under the state statute, notification is made no matter what the legal process requires and is, therefore, a higher level of service.

J. Education Code Section 76245

The test claim alleges:

> "Pursuant to Education Code Section 76245, upon service of a lawfully issued subpoena or a court order solely to produce a school record

> regarding any student, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office." (Test claim, page 31, line 17 through page 32, line 3, emphasis supplied)

First, CCC argues that this is a law of general application since all persons are subject to the specified provisions of the Code of Civil Procedure. CCC errs in this analysis, since, in determining whether a test claim statute contains a law of general application, the analysis must be directed to the test claim statute, not some other statute. Here, Education Code Section 76245 requires production of school records regarding any student. Only community college districts are required to perform this activity, it does not apply to all other entities or persons, and is, therefore, not a law of general application.

K. Education Code Section 76246

Education Code Section 76246 provides:

> "The Board of Governors of the California Community Colleges shall adopt appropriate rules and regulations to insure the orderly implementation of this chapter. A community college district governing board may adopt rules and regulations which are not inconsistent with this chapter or with those adopted by the board of governors in order to ensure the orderly implementation of this chapter."

CCC argues that the first sentence does not require community college districts to take any actions whatsoever and the second sentence merely states that districts "may" adopt rules and regulations, but it does not require them to do so.

With reference to the first sentence, the test claim alleges:

> "Pursuant to Education Code Section 76246, complying with appropriate rules and regulations adopted by the Board of Governors of the California Community Colleges to insure the orderly implementation of this chapter." (Test claim, page 32, lines 4-6)

Certainly CCC cannot mean that community college districts need not comply with appropriate rules and regulations adopted by its Board of Governors.

With reference to the second sentence, the test claim does not allege any activities concerning the adoption of rules and regulations by community college districts.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Student Records 02-TC-34
CLAIMANT: Riverside Unified School District and
Palomar Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of April 23, 2004, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/23/04, at San Diego, California.

Diane Bramwell

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated: 10/31/2003
List Print Date: 02/09/2004
Claim Number: 02-TC-34
Issue: Student Records

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Claimant Representative
Tel: (858) 514-8605
Fax: (858) 514-8645

Mr. Michael H. Fine
Riverside Unified School District
3380 14th Street
Riverside, CA 92501

Claimant
Tel: (909) 788-1020
Fax:

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Tel: (916) 646-1400
Fax: (916) 646-1300

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

Tel: (909) 672-9964
Fax: (909) 672-9963

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730
Tel: (866) 481-2642
Fax: (866) 481-5383

Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816
Tel: (916) 445-8757
Fax: (916) 323-4807

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814
Tel: (916) 445-0554
Fax: (916) 327-8306

Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814
Tel: (916) 445-8913
Fax: (916) 327-0225

Mr. Steve Smith
Steve Smith Enterprises, Inc.
One Capitol Mall, Suite 200
Sacramento, CA 95814
Tel: (916) 444-5243
Fax: (916) 479-0594

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363
Tel: (619) 725-7565
Fax: (619) 725-7569

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816
Tel: (916) 454-7310
Fax: (916) 454-7312

Mr. Jerry R. Patton
Palomar Community College District
1140 West Mission road
San Marcos, CA 92069
Claimant
Tel:
Fax:

Mr. Mark Brummond
California Community Colleges
Chancellor's Office (G-01)
1102 Q Street, Suite 300
Sacramento, CA 95814-6549
Tel: (916) 322-4005
Fax: (916) 323-8245

Mr. David E. Scribner
Schools Mandate Group
1 Capitol Mall, Suite 200
Sacramento, CA 95814

Tel: (916) 444-7260
Fax: (916) 444-7261

Mr. Todd Wherry
MCS Education Services
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Tel: (916) 669-5119
Fax: (916) 669-0888

EXHIBIT "A"
20 U.S.C. § 1232g

LIBRARY REFERENCES

American Digest System

Records ⇐30 to 35.

Encyclopedias

Records, see C.J.S. §§ 33, 60 et seq.

WESTLAW ELECTRONIC RESEARCH

Records cases; 326k[add key number].

See WESTLAW guide following the Explanation pages of this volume.

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(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 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. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(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.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) (i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released; or

(ii) after November 19, 1974, if—

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be

disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.

(F) 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, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory informa-

tion, or as is permitted under paragraph (1) of this subsection, unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1), as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party 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. If a third party outside the educational agency or institution permits access to

information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6)(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of Title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of Title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(c) **Surveys or data-gathering activities; regulations**

Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations

established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Disciplinary records; disclosure

Nothing in this section shall prohibit an educational agency or institution from—

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the students

(i) Drug and alcohol violation disclosures

(1) In general

Nothing in this chapter [20 U.S.C.A. § 1221 et seq.] or chapter 28 of this title [20 U.S.C.A. § 1001 et seq.] shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if—

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) State law regarding disclosure

Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a).

(Pub.L. 90–247, Title IV, § 444, formerly § 438, as added Pub.L. 93–380, Title V, § 513(a), Aug. 21, 1974, 88 Stat. 571, and amended Pub.L. 93–568, § 2(a), Dec. 31, 1974, 88 Stat. 1858; Pub.L. 96–46, § 4(c), Aug. 6, 1979, 93 Stat. 342; Pub.L. 96–88, Title III, § 301, Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub.L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 101–542, Title II, § 203, Nov. 8, 1990, 104 Stat. 2385; Pub.L. 102–325, Title XV, § 1555(a), July 23, 1992, 106 Stat. 840; renumbered § 444 and amended Pub.L. 103–382, Title II, §§ 212(b)(1), 249, 261(h), Oct. 20, 1994, 108 Stat. 3913, 3924, 3928; Pub.L. 105–244, Title I, § 102(a)(6)(C), Title IX, §§ 951, 952, Oct. 7, 1998, 112 Stat. 1618, 1835, 1836.)

So in original. The period probably should be a comma.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. House Report No. 93–805 and Senate Conference Report No. 93–1026, see 1974 U.S. Code Cong. and Adm. News, p. 4093.

House Report No. 93–1056 and Senate Conference Report No. 93–1409, see 1974 U.S. Code Cong. and Adm. News, p. 6779.

1979 Acts. House Report No. 96–338, see 1979 U.S. Code Cong. and Adm. News, p. 819.

Senate Report No. 96–49 and House Conference Report No. 96–459, see 1979 U.S. Code Cong. and Adm. News, p. 1514.

1990 Acts. House Report No. 101–518, see 1990 U.S. Code Cong. and Adm. News, p. 3363.

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(ii) Issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

(b) If, after an investigation under §98.9, the Secretary finds that a recipient or contractor has complied voluntarily with section 439 of the Act, the Secretary provides the complainant and the recipient or contractor written notice of the decision and the basis for the decision.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1232h)

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A—General

Sec.

Subpart B—What Are the Rights of Inspection and Review of Education Records?

Subpart C—What Are the Procedures for Amending Education Records?

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

Subpart E—What Are the Enforcement Procedures?

AUTHORITY: 20 U.S.C. 1232g, unless otherwise noted.

SOURCE: 53 FR 11943, Apr. 11, 1988, unless otherwise noted.

Subpart A—General

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in § 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if—

(1) The educational institution provides educational services or instruction, or both, to students; or

(2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section—

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59295, Nov. 21, 1996; 65 FR 41852, July 6, 2000]

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

NOTE: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59295, Nov. 21, 1996]

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

Act means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

Attendance includes, but is not limited to:

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

Dates of attendance. (a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (*e.g.*, undergraduate or

graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

Educational agency or institution means any public or private agency or institution to which this part applies under §99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

Education records. (a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of §99.8.

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

Institution of postsecondary education means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

Party means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

Personally identifiable information includes, but is not limited to:

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

Secretary means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

Student, except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

[53 FR 11943, Apr. 11, 1988, as amended at 60 FR 3468, Jan. 17, 1995; 61 FR 59295, Nov. 21, 1996; 65 FR 41852, July 6, 2000]

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

§ 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) An individual who is or has been a student at an educational institution and who applies for admission at another component of that institution does not have rights under this part with respect to records maintained by that other component, including records maintained in connection with the student's application for admission, unless the student is accepted and attends that other component of the institution.

(Authority: 20 U.S.C. 1232g(d))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3188, Jan. 7, 1993; 65 FR 41853, July 6, 2000]

§ 99.6 [Reserved]

§ 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to—

(i) Inspect and review the student's education records;

(ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

(iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and § 99.31 authorize disclosure without consent; and

(iv) File with the Department a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.

(3) The notice must include all of the following:

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for requesting amendment of records under § 99.20.

(iii) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

(Approved by the Office of Management and Budget under control number 1880–0508)

(Authority: 20 U.S.C. 1232g (e) and (f))

[61 FR 59295, Nov. 21, 1996]

§ 99.8 What provisions apply to records of a law enforcement unit?

(a)(1) *Law enforcement unit* means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to—

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a *law enforcement unit* if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are—

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean—

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of § 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g(a)(4)(B)(ii))

[60 FR 3468, Jan. 17, 1995]

Subpart B—What Are the Rights of Inspection and Review of Education Records?

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to—

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

(c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records.

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall—

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

(e) The educational agency or institution, or SEA or its component shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of *Education records* in § 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

§ 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are:

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if:

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's:

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if:

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall:

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1) (A), (B), (C), and (D))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59298, Nov. 21, 1996]

Subpart C—What Are the Procedures for Amending Education Records?

§ 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall:

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59296, Nov. 21, 1996]

§99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by §99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under §99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

§99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in §99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

§99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by §99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of §99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of §99.35, to authorized representatives of—

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, *financial aid* means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically—

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term *organization* includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents, as defined in § 99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with—

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii)(A) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant

for the educational agency or institution to proceed with the legal action as plaintiff.

(B) If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in § 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in § 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure, subject to the requirements in § 99.39, is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense. The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.

(14)(i) The disclosure, subject to the requirements in § 99.39, is in connection with a disciplinary proceeding at an institution of postsecondary education. The institution must not disclose the final results of the disciplinary proceeding unless it determines that—

(A) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(B) With respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

(ii) The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student.

(iii) This section applies only to disciplinary proceedings in which the final results were reached on or after October 7, 1998.

(15)(i) The disclosure is to a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance if—

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

(ii) Paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B), (b)(6), (h), and (i))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 61 FR 59296, Nov. 21, 1996; 65 FR 41853, July 6, 2000]

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under § 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in § 99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under § 99.31(a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Approved by the Office of Management and Budget under control number 1880–0508)

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(4)(A))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

§ 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of § 99.31; and

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made to parents of dependent students under § 99.31(a)(8), to disclosures made pursuant to court orders, lawfully issued subpoenas, or litigation under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), to disclosures made to a parent or student under § 99.31(a)(12), to disclosures made in connection with a disciplinary proceeding under § 99.31(a)(14), or to disclosures made to parents under § 99.31(a)(15).

(d) Except for disclosures under § 99.31(a) (9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of § 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996; 65 FR 41853, July 6, 2000]

§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under § 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from—

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

(Authority: 20 U.S.C. 1232g (b)(1)(I) and (h))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 61 FR 59297, Nov. 21, 1996]

§ 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

§ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974, concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

(Authority: 20 U.S.C. 1232g(b)(1)(J))

[61 FR 59297, Nov. 21, 1996]

§ 99.39 What definitions apply to the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or nonforcible sex offenses?

As used in this part:

Alleged perpetrator of a crime of violence is a student who is alleged to have committed acts that would, if proven, constitute any of the following offenses or attempts to commit the following offenses that are defined in appendix A to this part:

Arson
Assault offenses
Burglary
Criminal homicide—manslaughter by negligence
Criminal homicide—murder and nonnegligent manslaughter
Destruction/damage/vandalism of property
Kidnapping/abduction
Robbery
Forcible sex offenses.

Alleged perpetrator of a nonforcible sex offense means a student who is alleged to have committed acts that, if proven, would constitute statutory rape or incest. These offenses are defined in appendix A to this part.

Final results means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. The disclosure of final results must include only the name of the student, the violation committed, and any sanction imposed by the institution against the student.

Sanction imposed means a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.

Violation committed means the institutional rules or code sections that were violated and any essential findings supporting the institution's conclusion that the violation was committed.

(Authority: 20 U.S.C. 1232g(b)(6))

[65 FR 41853, July 6, 2000]

Subpart E—What Are the Enforcement Procedures?

§ 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, *Office* means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to:

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term *applicable program* is defined in section 400 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

§ 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–4605.

(Authority: 20 U.S.C. 1232g(g))

[65 FR 41854, July 6, 2000]

§ 99.64 What is the complaint procedure?

(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office may extend the time limit in this section for good cause shown.

(Authority: 20 U.S.C. 1232g(f))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 65 FR 41854, July 6, 2000]

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under § 99.64(b). The notice to the educational agency or institution—

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 99.64.

(Authority: 20 U.S.C. 1232g(g))

[58 FR 3189, Jan. 7, 1993]

§ 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under §99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act—

(1) Withhold further payments under any applicable program;

(2) Issue a compliant to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under §99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(NOTE: 34 CFR part 78 contains the regulations of the Education Appeal Board)

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

APPENDIX A TO PART 99—CRIMES OF VIOLENCE DEFINITIONS

ARSON

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

ASSAULT OFFENSES

An unlawful attack by one person upon another.

NOTE: By definition there can be no "attempted" assaults, only "completed" assaults.

(a) *Aggravated Assault.* An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious injury if the crime were successfully completed.)

(b) *Simple Assault.* An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

(c) *Intimidation.* To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words or other conduct, or both, but without displaying a weapon or subjecting the victim to actual physical attack.

NOTE: This offense includes stalking.

BURGLARY

The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

CRIMINAL HOMICIDE—MANSLAUGHTER BY NEGLIGENCE

The killing of another person through gross negligence.

CRIMINAL HOMICIDE—MURDER AND NONNEGLIGENT MANSLAUGHTER

The willful (nonnegligent) killing of one human being by another.

DESTRUCTION/DAMAGE/VANDALISM OF PROPERTY

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

KIDNAPPING/ABDUCTION

The unlawful seizure, transportation, or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parent(s) or legal guardian.

NOTE: Kidnapping/Abduction includes hostage taking.

ROBBERY

The taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear.

NOTE: Carjackings are robbery offenses where a motor vehicle is taken through force or threat of force.

SEX OFFENSES, FORCIBLE

Any sexual act directed against another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent.

(a) *Forcible Rape* (Except "Statutory Rape"). The carnal knowledge of a person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity (or because of his or her youth).

(b) *Forcible Sodomy.* Oral or anal sexual intercourse with another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(c) *Sexual Assault With An Object.* To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

NOTE: An "object" or "instrument" is anything used by the offender other than the offender's genitalia. Examples are a finger, bottle, handgun, stick, etc.

(d) *Forcible Fondling.* The touching of the private body parts of another person for the purpose of sexual gratification, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

NOTE: Forcible Fondling includes "Indecent Liberties" and "Child Molesting."

NONFORCIBLE SEX OFFENSES (EXCEPT "PROSTITUTION OFFENSES")

Unlawful, nonforcible sexual intercourse.

(a) *Incest.* Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(b) *Statutory Rape.* Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(Authority: 20 U.S.C. 1232g(b)(6) and 18 U.S.C. 16)

[65 FR 41854, July 6, 2000]

EXHIBIT "C"
20 U.S.C. § `092

U.S. Code as of: 01/22/02

Section 1092. Institutional and financial assistance information for students

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(a) Information dissemination activities

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall carry out information dissemination activities for prospective and enrolled students (including those attending or planning to attend less than full time) regarding the institution and all financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42. The information required by this section shall be produced and be made readily available upon request, through appropriate publications, mailings, and electronic media, to an enrolled student and to any prospective student. Each eligible institution shall, on an annual basis, provide to all enrolled students a list of the information that is required to be provided by institutions to students by this section and section 1232g of this title, together with a statement of the procedures required to obtain such information. The information required by this section shall accurately describe -

(A) the student financial assistance programs available to students who enroll at such institution;

(B) the methods by which such assistance is distributed among student recipients who enroll at such institution;

(C) any means, including forms, by which application for student financial assistance is made and requirements for accurately preparing such application;

(D) the rights and responsibilities of students receiving financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42;

(E) the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;

(F) a statement of -

(i) the requirements of any refund policy with which the institution is required to comply;

(ii) the requirements under section 1091b of this title for the return of grant or loan assistance provided under this subchapter and part C of subchapter I of chapter 34 of title 42; and

(iii) the requirements for officially withdrawing from the institution;

(G) the academic program of the institution, including (i) the current degree programs and other educational and training programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic program, and (iii) the faculty and other instructional personnel;

(H) each person designated under subsection (c) of this section, and the methods by which and locations in which any person so designated may be contacted by students and prospective students who are seeking information required by this subsection;

(I) special facilities and services available to handicapped students;

(J) the names of associations, agencies, or governmental bodies which accredit, approve, or license the institution and its programs, and the procedures under which any current or prospective student may obtain or review upon request a copy of the documents describing the institution's accreditation, approval, or licensing;

(K) the standards which the student must maintain in order to be considered to be making satisfactory progress, pursuant to section 1091(a)(2) of this title;

(L) the completion or graduation rate of certificate- or degree-seeking, full-time, undergraduate students entering such institutions;

(M) the terms and conditions under which students receiving guaranteed student loans under part B of this subchapter or direct student loans under part D of this subchapter, or both, may -

(i) obtain deferral of the repayment of the principal and interest for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)) or under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.), or for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service, and

(ii) obtain partial cancellation of the student loan for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)) under (FOOTNOTE 1) the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.) or, for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service;

(FOOTNOTE 1) So in original. Probably should be ''or under''.

(N) that enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment in the home institution for purposes of applying for Federal student financial assistance; and

(O) the campus crime report prepared by the institution pursuant to subsection (f) of this section, including all required reporting categories.

(2) For the purpose of this section, the term ''prospective student'' means any individual who has contacted an eligible institution requesting information concerning admission to that institution.

(3) In calculating the completion or graduation rate under subparagraph (L) of paragraph (1) of this subsection or under subsection (e) of this section, a student shall be counted as a completion or graduation if, within 150 percent of the normal time for completion of or graduation from the program, the student has

completed or graduated from the program, or enrolled in any program of an eligible institution for which the prior program provides substantial preparation. The information required to be disclosed under such subparagraph -

(A) shall be made available by July 1 each year to enrolled students and prospective students prior to the students enrolling or entering into any financial obligation; and

(B) shall cover the one-year period ending on August 31 of the preceding year.

(4) For purposes of this section, institutions may exclude from the information disclosed in accordance with subparagraph (L) of paragraph (1) the completion or graduation rates of students who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government.

(5) The Secretary shall permit any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection, to use such data to satisfy the requirements of this subsection.

(6) Each institution may provide supplemental information to enrolled and prospective students showing the completion or graduation rate for students described in paragraph (4) or for students transferring into the institution or information showing the rate at which students transfer out of the institution.

(b) Exit counseling for borrowers

(1)(A) Each eligible institution shall, through financial aid officers or otherwise, make available counseling to borrowers of loans which are made, insured, or guaranteed under part B (other than loans made pursuant to section 1078-2 of this title) of this subchapter or made under part C or D of this subchapter prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution. The counseling required by this subsection shall include -

(i) the average anticipated monthly repayments, a review of the repayment options available, and such debt and management strategies as the institution determines are designed to facilitate the repayment of such indebtedness; and

(ii) the terms and conditions under which the student may obtain partial cancellation or defer repayment of the principal and interest pursuant to sections 1078(b), 1087dd(c)(2), and 1087ee of this title.

(B) In the case of borrower who leaves an institution without the prior knowledge of the institution, the institution shall attempt to provide the information described in subparagraph (A) to the student in writing.

(2)(A) Each eligible institution shall require that the borrower of a loan made under part B, C, or D of this subchapter submit to the institution, during the exit interview required by this subsection -

(i) the borrower's expected permanent address after leaving the institution (regardless of the reason for leaving);

(ii) the name and address of the borrower's expected employer after leaving the institution;

(iii) the address of the borrower's next of kin; and

(iv) any corrections in the institution's records relating the borrower's name, address, social security number, references, and

driver's license number.

(B) The institution shall, within 60 days after the interview, forward any corrected or completed information received from the borrower to the guaranty agency indicated on the borrower's student aid records.

(C) Nothing in this subsection shall be construed to prohibit an institution of higher education from utilizing electronic means to provide personalized exit counseling.

(c) Financial assistance information personnel

Each eligible institution shall designate an employee or group of employees who shall be available on a full-time basis to assist students or potential students in obtaining information as specified in subsection (a) of this section. The Secretary may, by regulation, waive the requirement that an employee or employees be available on a full-time basis for carrying out responsibilities required under this section whenever an institution in which the total enrollment, or the portion of the enrollment participating in programs under this subchapter and part C of subchapter I of chapter 34 of title 42 at that institution, is too small to necessitate such employee or employees being available on a full-time basis. No such waiver may include permission to exempt any such institution from designating a specific individual or a group of individuals to carry out the provisions of this section.

(d) Departmental publication of descriptions of assistance programs

(1) The Secretary shall make available to eligible institutions, eligible lenders, and secondary schools descriptions of Federal student assistance programs including the rights and responsibilities of student and institutional participants, in order to (A) assist students in gaining information through institutional sources, and (B) assist institutions in carrying out the provisions of this section, so that individual and institutional participants will be fully aware of their rights and responsibilities under such programs. In particular, such information shall include information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations that will be incurred as a result of receiving loans of varying amounts under this subchapter and part C of subchapter I of chapter 34 of title 42. In addition, such information shall include information to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, and finance charges, and samples of loan consolidation profiles to illustrate such consequences. The Secretary shall provide information concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service, shall indicate (in terms of the Federal minimum wage) the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization. Such information shall be provided by eligible institutions and eligible lenders at any time that information regarding loan availability is provided to any student.

(2) The Secretary, to the extent the information is available, shall compile information describing State and other prepaid tuition programs and savings programs and disseminate such information to States, eligible institutions, students, and parents in departmental publications.

(3) The Secretary, to the extent practicable, shall update the

Department's Internet site to include direct links to databases that contain information on public and private financial assistance programs. The Secretary shall only provide direct links to databases that can be accessed without charge and shall make reasonable efforts to verify that the databases included in a direct link are not providing fraudulent information. The Secretary shall prominently display adjacent to any such direct link a disclaimer indicating that a direct link to a database does not constitute an endorsement or recommendation of the database, the provider of the database, or any services or products of such provider. The Secretary shall provide additional direct links to information resources from which students may obtain information about fraudulent and deceptive practices in the provision of services related to student financial aid.

(e) Disclosures required with respect to athletically related student aid

(1) Each institution of higher education which participates in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 and is attended by students receiving athletically related student aid shall annually submit a report to the Secretary which contains -

(A) the number of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track, and all other sports combined;

(B) the number of students at the institution of higher education, broken down by race and sex;

(C) the completion or graduation rate for students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track and all other sports combined;

(D) the completion or graduation rate for students at the institution of higher education, broken down by race and sex;

(E) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following categories: basketball, football, baseball, cross country/track, and all other sports combined; and

(F) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education broken down by race and sex.

(2) When an institution described in paragraph (1) of this subsection offers a potential student athlete athletically related student aid, such institution shall provide to the student and the student's parents, guidance counselor, and coach the information contained in the report submitted by such institution pursuant to paragraph (1). If the institution is a member of a national collegiate athletic association that compiles graduation rate data on behalf of the association's member institutions that the Secretary determines is substantially comparable to the information described in paragraph (1), the distribution of the compilation of such data to all secondary schools in the United States shall fulfill the responsibility of the institution to provide information to a prospective student athlete's guidance counselor and coach.

(3) For purposes of this subsection, institutions may exclude from the reporting requirements under paragraphs (1) and (2) the

completion or graduation rates of students and student athletes who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government.

(4) Each institution of higher education described in paragraph (1) may provide supplemental information to students and the Secretary showing the completion or graduation rate when such completion or graduation rate includes students transferring into and out of such institution.

(5) The Secretary, using the reports submitted under this subsection, shall compile and publish a report containing the information required under paragraph (1) broken down by -

(A) individual institutions of higher education; and

(B) athletic conferences recognized by the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics.

(6) The Secretary shall waive the requirements of this subsection for any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection.

(7) The Secretary, in conjunction with the National Junior College Athletic Association, shall develop and obtain data on completion or graduation rates from two-year colleges that award athletically related student aid. Such data shall, to the extent practicable, be consistent with the reporting requirements set forth in this section.

(8) For purposes of this subsection, the term ''athletically related student aid'' means any scholarship, grant, or other form of financial assistance the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution of higher education in order to be eligible to receive such assistance.

(9) The reports required by this subsection shall be due each July 1 and shall cover the 1-year period ending August 31 of the preceding year.

(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law

enforcement, including -

(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and

(ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available -

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson; and

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of clause (i), and other crimes involving bodily injury to any person in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 1011i of this title.

(I) A statement advising the campus community where law enforcement agency information provided by a State under section 14071(j) of title 42, concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to

campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4)(A) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including -

(i) the nature, date, time, and general location of each crime; and

(ii) the disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall -

(A) review such statistics and report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The term ''campus'' means -

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) property within the same reasonably contiguous

geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term ''noncampus building or property'' means -

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term ''public property'' means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)(A) Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding -

(i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that -

(I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) both the accuser and the accused shall be informed of

the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur -

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 1094(c)(3)(B) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 1094(c)(3)(B) of this title.

(14)(A) Nothing in this subsection may be construed to -

(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) This subsection may be cited as the ''Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act''.

(g) Data required

(1) In general

Each coeducational institution of higher education that participates in any program under this subchapter and part C of subchapter I of chapter 34 of title 42, and has an intercollegiate athletic program, shall annually, for the

immediately preceding academic year, prepare a report that contains the following information regarding intercollegiate athletics:

(A) The number of male and female full-time undergraduates that attended the institution.

(B) A listing of the varsity teams that competed in intercollegiate athletic competition and for each such team the following data:

(i) The total number of participants, by team, as of the day of the first scheduled contest for the team.

(ii) Total operating expenses attributable to such teams, except that an institution may also report such expenses on a per capita basis for each team and expenditures attributable to closely related teams such as track and field or swimming and diving, may be reported together, although such combinations shall be reported separately for men's and women's teams.

(iii) Whether the head coach is male or female and whether the head coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as head coaches shall be considered to be head coaches for the purposes of this clause.

(iv) The number of assistant coaches who are male and the number of assistant coaches who are female for each team and whether a particular coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as assistant coaches shall be considered to be assistant coaches for the purposes of this clause.

(C) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, separately for men's and women's teams overall.

(D) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(E) The total amount of expenditures on recruiting, separately for men's and women's teams overall.

(F) The total annual revenues generated across all men's teams and across all women's teams, except that an institution may also report such revenues by individual team.

(G) The average annual institutional salary of the head coaches of men's teams, across all offered sports, and the average annual institutional salary of the head coaches of women's teams, across all offered sports.

(H) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports.

(I)(i) The total revenues, and the revenues from football, men's basketball, women's basketball, all other men's sports combined and all other women's sports combined, derived by the institution from the institution's intercollegiate athletics activities.

(ii) For the purpose of clause (i), revenues from intercollegiate athletics activities allocable to a sport shall include (without limitation) gate receipts, broadcast revenues, appearance guarantees and options, concessions, and advertising, but revenues such as student activities fees or alumni contributions not so allocable shall be included in the calculation of total revenues only.

(J)(i) The total expenses, and the expenses attributable to

football, men's basketball, women's basketball, all other men's sports combined, and all other women's sports combined, made by the institution for the institution's intercollegiate athletics activities.

(ii) For the purpose of clause (i), expenses for intercollegiate athletics activities allocable to a sport shall include (without limitation) grants-in-aid, salaries, travel, equipment, and supplies, but expenses such as general and administrative overhead not so allocable shall be included in the calculation of total expenses only.

(2) Special rule

For the purposes of subparagraph (G), (FOOTNOTE 2) if a coach has responsibilities for more than one team and the institution does not allocate such coach's salary by team, the institution should divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(FOOTNOTE 2) So in original. Probably should be ''paragraph (1)(G),''.

(3) Disclosure of information to students and public

An institution of higher education described in paragraph (1) shall make available to students and potential students, upon request, and to the public, the information contained in the report described in paragraph (1), except that all students shall be informed of their right to request such information.

(4) Submission; report; information availability

(A) On an annual basis, each institution of higher education described in paragraph (1) shall provide to the Secretary, within 15 days of the date that the institution makes available the report under paragraph (1), the information contained in the report.

(B) The Secretary shall prepare a report regarding the information received under subparagraph (A) and submit such report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate by April 1, 2000. The report shall -

(i) summarize the information and identify trends in the information;

(ii) aggregate the information by divisions of the National Collegiate Athletic Association; and

(iii) contain information on each individual institution of higher education.

(C) The Secretary shall ensure that the reports described in subparagraph (A) and the report to Congress described in subparagraph (B) are made available to the public within a reasonable period of time.

(D) Not later than 180 days after October 7, 1998, the Secretary shall notify all secondary schools in all States regarding the availability of the information reported under subparagraph (B) and the information made available under paragraph (1), and how such information may be accessed.

(5) ''Operating expenses'' defined

For the purposes of this subsection, the term ''operating expenses'' means expenditures on lodging and meals, transportation, officials, uniforms and equipment.

Previous [Notes] Next

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

EXHIBIT G

January 29, 2009

Mr. Michael H. Fine
Riverside Unified School District
Business Services & Government Relations
6050 Industrial Avenue
Riverside, CA 92504

Ms. Bonne Ann Dowd
Palomar Community College District
1140 West Mission Road
San Marcos, CA 92069

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Draft Staff Analysis, Comment Period, and Hearing Date
Student Records, 02-TC-34
Education Code Sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, and 76246
Statutes 1975, Chapter 816 (S.B. 182); Statutes 1976, Chapter 1010 (A.B. 3100); Statutes 1976, Chapter 1297 (S.B. 1493); Statutes 1980, Chapter 1347 (A.B. 2168); Statutes 1983, Chapter 498 (S.B. 813); Statute 1989, Chapter 593 (S.B. 1546); Statutes 1993, Chapter 561 (A.B. 1539); Statutes 1995, Chapter 758 (A.B. 446); Statutes 1996, Chapter 879 (A.B. 1721); Statutes 1998, Chapter 311 (S.B. 933); Statutes 1998, Chapter 846 (S.B. 1468); Statutes 2000, Chapter 67 (A.B. 2453)
Riverside Unified School District and Palomar Community College District, Co-Claimants

Dear Mr. Fine and Ms. Dowd:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Thursday, **February 19, 2009**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Friday, March 27, 2009**, at 9:30 a.m. in Room 447, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about March 13, 2009. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Authorized Representative

Pursuant to the Commission's regulations a party may appear in person or through a representative. You previously authorized Keith B. Petersen, SixTen and Associates, to act as your authorized representative. On June 25, 2008, Mr. Petersen notified the Commission that he would no longer act as your authorized representative. If you intend to appoint a new representative, please complete and sign the enclosed form, and let us know in advance if you or a representative will testify at the hearing, and if other witnesses will appear.

Please contact Kenny Louie at (916) 323-2611 if you have questions.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

Enclosures:
Draft Staff Analysis
Authorization Form

J:mandates/2002/tc/02tc34/dsatrans

ITEM ____

TEST CLAIM

DRAFT STAFF ANALYSIS

Education Code Sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, 76246

Statutes 1975, Chapter 816 (S.B. 182); Statutes 1976, Chapter 1010 (A.B. 3100); Statutes 1976, Chapter 1297 (S.B. 1493); Statutes 1980, Chapter 1347 (A.B. 2168); Statutes 1983, Chapter 498 (S.B. 813); Statute 1989, Chapter 593 (S.B. 1546); Statutes 1993, Chapter 561 (A.B. 1539); Statutes 1995, Chapter 758 (A.B. 446); Statutes 1996, Chapter 879 (A.B. 1721); Statutes 1998, Chapter 311 (S.B. 933); Statutes 1998, Chapter 846 (S.B. 1468); Statutes 2000, Chapter 67 (A.B. 2453)

Student Records
02-TC-34
Riverside Unified School District and Palomar Community College District, Co-Claimants

EXECUTIVE SUMMARY

Background

This test claim addresses the access to and privacy of the records of pupils in kindergarten through 12th grade (K-12) school districts and students in community colleges.

Test Claim Statutes

The test claim statutes are all part of two larger statutory schemes governing K-12 school district and community college district management of pupil and student records. The test claim statutes address various areas of pupil and student record management for K-12 school districts and community college districts including the establishment, maintenance, and destruction of records; charges for copies of transcripts; regulations regarding evaluation of achievement; transfer of pupil and student records; transfer of pupil records for foster children; release of information to peace officers; furnishing of pupil and student information in compliance with a court order or subpoena; and notice to others concerning a student's disciplinary records.

Education Code sections 49060 and 76200 provide that the legislative intent of the two statutory schemes is to resolve potential conflicts between California law regarding pupil/student records and the federal Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g) in order to ensure the continued receipt of federal funds by K-12 school districts and community colleges, and to revise generally and update the law relating to pupil and student records.[1] In this context the Legislature has added and amended various code sections within the statutory schemes governing K-12 school district and community college district management of pupil and student records. As a result, although FERPA and other federal laws parallel

[1] See Education Code sections 49060 and 76200 for legislative intent.

California laws regarding certain aspects of pupil and student record management, California law goes beyond federal law in other aspects.

The claimants assert that the test claim statutes impose state-mandated activities that constitute new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and seek reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the test claim statutes.

The Chancellor's Office argues that the test claim, as applicable to community colleges, should be denied in its entirety because the test claim statutes: (1) constitute a federal mandate; (2) do not require any activities either pursuant to their plain language or because the activity is the result of an underlying discretionary activity; and (3) do not constitute new programs or higher levels of services as the activities were required by prior state and/or federal law.

Conclusion

Staff concludes that Education Code sections 49069.3, 49069.5, and 49076.5 constitute reimbursable state-mandated programs on kindergarten through 12th grade school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)
2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)
3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) the location of the pupil's records; (2) the last school and teacher of the pupil; (3) the pupil's current grade level; and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)
4. Transfer a pupil's educational and health record within five working days of receipt of information regarding the new educational placement of a pupil in foster care. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Staff further concludes that Education Code 76234 constitutes a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activity:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

In addition, staff concludes the fee authority to charge a fee that does not exceed the actual cost of furnishing copies of any pupil/student records, set forth in Education Code sections 49065 and 76223, is applicable to the state-mandated programs described above. This fee authority does not extend to furnishing the first two transcripts of former pupils' records/students' records, or the first two verifications of various records of former pupils/students, or the search for or retrieval of any pupil/student record. Therefore, any revenue resulting from the fee authority set forth in Education Code sections 49065 and 76223 is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil/student records.

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and partially approve this test claim.

STAFF ANALYSIS

Claimants

Riverside Unified School District and the Palomar Community College District

Chronology

06/23/03	The claimants, Riverside Unified School District and the Palomar Community College District, file test claim with the Commission on State Mandates ("Commission")
07/08/03	Commission staff issues completeness letter and requests comments
08/14/03	The Department of Finance (Finance) requests an extension of time for comments to September 8, 2003
08/18/03	Commission staff grants extension of time for comments to September 8, 2003
08/21/03	The California Community Colleges, Chancellor's Office (Chancellor's Office) requests an extension of time for comments, to October 11, 2003
08/28/03	Commission staff grants extension of time for comments to October 11, 2003
09/15/03	Finance files comments on the test claim
10/10/03	The claimants file response to the comments by Finance
10/10/03	The Chancellor's Office requests an extension of time for comments to December 15, 2003
10/17/03	Commission staff grants extension of time for comments to December 15, 2003
10/31/03	Finance requests an extension of time for comments on group of test claims including 02-TC-34 to February 2004
11/07/03	Commission staff grants extension of time for comments on group of test claims to February 7, 2004
02/06/04	The Chancellor's Office requests an extension of time for comments to March 9, 2004
02/09/04	Commission staff grants extension of time for comments to March 9, 2004
02/18/04	Finance requests an extension of time for comments on group of test claims including 02-TC-34 to August 9, 2004
02/18/04	Commission staff grants extension of time for comments to May 18, 2004
03/16/04	The Chancellor's Office files comments on the test claim
04/28/04	The claimants file response to the comments by the Chancellor's Office
01/29/09	Commission staff issues draft staff analysis

Background

This test claim addresses the access to and privacy of the records of pupils in kindergarten through 12th grade (K-12) school districts and students in community colleges.

Test Claim Statutes:

The test claim statutes, Education Code sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, and 76246 are all part of two larger statutory schemes (Education Code sections 49060 – 49085, and 76200 – 76246) governing K-12 school district and community college district management of pupil and student records. The test claim statutes address various areas of pupil and student record management for K-12 school districts (Ed. Code, §§ 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, and 49078) and community college districts (76220, 76223, 76225, 76234, 76244, 76245, and 76246) including the establishment, maintenance, and destruction of records; charges for copies of transcripts; regulations regarding evaluation of achievement; transfer of pupil and student records; transfer of pupil records for foster children; release of information to peace officers; furnishing of pupil and student information in compliance with a court order or subpoena; and notice to others concerning a student's disciplinary records.

Education Code sections 49060 and 76200 provide that the legislative intent of the two statutory schemes is to resolve potential conflicts between California law regarding pupil/student records and the federal Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g) in order to ensure the continued receipt of federal funds by K-12 school districts and community colleges, and to revise generally and update the law relating to pupil and student records.[2] In this context the Legislature has added and amended various code sections within the statutory schemes governing K-12 school district and community college district management of pupil and student records. As a result, although FERPA and other federal laws parallel California laws regarding certain aspects of pupil and student record management, California law goes beyond federal law in other aspects.

Federal Law:

***The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)*:**

As further discussed below, the Chancellor's Office asserts that the some of the activities required by the test claim statutes are federally mandated by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) (20 U.S.C. § 1092 (f), 34 C.F.R. § 668.1 et seq., as amended by Pub.L. No. 105-244). The Clery Act addresses the dissemination of crime statistics and the notification of victim rights to the campus community. The Clery Act, originally enacted as the Crime Awareness and Campus Security Act of 1990,[3] conditions participation in any student financial assistance programs authorized by Title IV of the Higher Education Act of 1965 (HEA) and/or any program under part C of subchapter I of

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[2] See Education Code sections 49060 and 76200 for legislative intent.

[3] Title II of the Student Right to Know and Campus Security Act (Pub.L. No. 101-542 (Nov. 8, 1990) 104 Stat. 2381) amending 20 U.S.C. sections 1092, 1094, and 1232g.

chapter 34 of Title 42 (Federal Work Study programs (42 U.S.C. § 2751 et seq.) on compliance with the provisions of the Clery Act.

The Clery Act was enacted amid concerns that the proliferation of campus crime created a growing threat to students, faculty, and school employees.[4] Congress recognized that contemporary campus communities had become increasingly dangerous places and noted that in roughly eighty percent of campus crimes the perpetrator and the victim were both students.[5] These factors led Congress to find, among other things that, "students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or report occurrences of crime."[6] In addition, Congress established the requirement that all participating institutions "make timely reports to the campus community on crimes considered to be a threat to other students and employees ... that are reported to campus security or local law police agencies."[7] The reports are to be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

In 1992, Congress sought to provide victims of sexual assault on campus certain basic rights. Congress added to the Clery Act the requirement that participating institutions develop and distribute a policy statement concerning their campus sexual assault programs targeting the prevention of sex offenses. The policy must address the procedures to be followed if a sex offense occurs. In addition, the policy must contain a statement that the alleged victim of sexual assault must be notified of any disciplinary action taken against the alleged assailant.

The Family Educational Rights and Privacy Act of 1974 (FERPA):

In 1974, Congress enacted the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g, 34 C.F.R. § 99.1 et seq.). FERPA was enacted to protect parents and students' right to access the student's records[8] and "to protect [parents' and students'] rights to privacy by limiting the transferability of their records without their consent."[9] FERPA conditions federal funds to an educational agency or institution on the agency or institution's compliance with the provisions of FERPA and its implementing regulations.[10]

FERPA's provisions generally prohibit the release of a student's educational records without adherence to specified procedural safeguards for the privacy rights of parents and students.

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[4] *Havlik v. Johnson & Wales University* (1st Cir. 2007) 509 F.3d 25, 30, citing to H.R.Rep. No. 101-518, p. 7 (1990) and Pub.L. No. 101-542, section 202, 104 Stat. 2381.

[5] *Ibid.*

[6] Section 202 of Pub.L. 101-542.

[7] Title 20 United States Code section 1092 (f)(3).

[8] Title 20 United States Code section 1232g (a)(1)(A). See 20 United States Code section 1232g (d) for applicability of FERPA's provisions to students that have attained eighteen years of age or that are attending institutions of postsecondary education.

[9] *United States v. Miami University* (6th Cir. 2002) 294 F.3d 797, 806.

[10] Title 20 United States Code section 1232g; 34 Code of Federal Regulations part 99.1 (Nov. 15, 2007).

These procedural safeguards include the provision of notice to parents or students regarding the release of specified information, and the need for consent in order to release specified information or records. FERPA's provisions also provide exceptions in which educational institutions or agencies may release a student's educational record without the consent of a parent or student. However, some of these exceptions set forth additional safeguards for the privacy rights of parents and students.

Claimants' Position

The claimants, Riverside Unified School District and the Palomar Community College District, contend that the test claim statutes constitute reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.

The claimants assert that prior to January 1, 1975, there were no statutes, code sections or regulations which required school districts to search and retrieve, furnish or forward student records.[11] In addition, the claimants argue that meeting the new requirements of the test claim statutes require increased costs for K-12 school districts and community college districts to implement the following activities:

I. SCHOOL DISTRICTS

A) To establish and implement policies and procedures, and periodically update those policies and procedures as required for the searching, retrieving and furnishing of student records pursuant to Chapter 6.5 of Part 27, Division 4, Title 1 of the Education Code.

B) Pursuant to Education Code Section 49062, establishing, maintaining and destroying pupil records, including health records, according to regulations adopted by the State Board of Education.

C) Pursuant to Education Code Section 49065, the furnishing of (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils, and (3) for searching and retrieving pupil records when transcripts or verifications are requested.

D) Pursuant to Education Code Section 49067, subdivision (a), conferencing with, or providing a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. Pursuant to subdivision (b), adopting and implementing regulations, when assigning a failing grade based upon excess absences, which include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

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[11] Test claim 02-TC-34, p. 2.

E) Pursuant to Education Code Section 49068, whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, transferring the pupil's permanent record or a copy thereof upon receipt of a request from the district or private school where the pupil intends to enroll. For any school district requesting such a transfer of a record, notifying the parent of his or her right to receive a copy of the record and a right to a hearing to challenge the content of the record.

F) Pursuant to Education Code Section 44069.3, allowing access to records of grades and transcripts, and any individualized education plans (IEP) that may have been developed pursuant to Chapter 4 (commencing with Section 56300) of Part 30 maintained by school districts of those pupils to Foster family agencies with jurisdiction over currently enrolled or former pupils.

G) Pursuant to Education Code Section 49069.5, subdivision (b), cooperating with the county social service or probation department, a regional center for the developmentally disabled, or other placing agency to ensure that the education record of a pupil in foster care is transferred to the receiving local education agency in an expedited manner upon the request of those agencies. Pursuant to subdivision (d), the information provided shall include, but not be limited to, the following: (1) The location of the pupil's records, (2) the last school and teacher of the pupil, (3) the pupil's current grade level, and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

H) Pursuant to Education Code Section 49076.5, releasing information specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:

(1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.

(2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

I) Pursuant to Education Code Section 49077, making a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

J) Pursuant to Education Code Section 49078, upon service of a lawfully issued subpoena or a court order solely for the purpose of producing records of a pupil, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office.

II. COMMUNITY COLLEGES

K) To establish and implement policies and procedures, and periodically update those policies and procedures, for the searching, retrieving and furnishing student records pursuant to Chapter 1.5 of Part 47, Division 7 of Title 3 of the Education Code.

L) Pursuant to Education Code Section 76220, establishing, maintaining, and destroying student records according to regulations adopted by the Board of Governors of the California Community Colleges.

M) Pursuant to Education Code Section 76223, providing, free of charge, (1) up to two transcripts of students' records or (2) up to two verifications of various records of students; and for searching or retrieving any student records when transcripts or verifications are required.

N) Pursuant to Education Code Section 76225, whenever a student transfers from one community college to another, or to a public or private institution of postsecondary education within the state, transferring appropriate records or copies and notifying the student of his or her right to receive a copy of the record and his or her right to a hearing to challenge the content of the record.

O) Pursuant to Education Code Section 76234, whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, or any conduct that threatens the health and safety of the alleged victim, informing the alleged victim of the results of any disciplinary action by the community college and the results of any appeal.

P) Pursuant to Education Code Section 76244, making a reasonable effort to notify a student in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

Q) Pursuant to Education Code Section 76245, upon service of a lawfully issued subpoena or a court order solely to produce a school record regarding any student, either personally appearing as a witness in the proceeding or, in lieu of a personal appearance, submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office.

R) Pursuant to Education Code Section 76246, complying with appropriate rules and regulations adopted by the Board of Governors of the California Community Colleges to insure the orderly implementation of this chapter.[12]

The claimants filed comments, dated October 10, 2003, and April 23, 2004, in rebuttal to Finance's and the Chancellor's Office comments set forth immediately below. The claimants' arguments will be addressed as necessary in the discussion below.

Department of Finance's Position (Finance)

In comments submitted on September 15, 2003, Finance asserts that several of the activities for which state reimbursement is sought by the claimants were already required by the state and/or federal law in 1974 or before. This is contrary to the claimants' assertion that "prior to 1975, there were no statutes, code sections or regulations which required school districts to search and retrieve, furnish or forward student records."[13] Finance contends that the claimants did not include "a written narrative that includes a detailed description of the activities required under prior law or executive order," as required by Title 2, Code of Regulations, Section 1183, subdivision (d)(3)(A). Thus, Finance questions the completeness of the test claim and requested that the Commission direct the claimants to accurately provide the information required by the regulations.[14]

California Community Colleges-Chancellor's Office Position (Chancellor's Office)

The Chancellor's Office, regarding the portion of the test claim applicable to community colleges (Ed. Code, §§ 76220, 76223, 76225, 76234, 76244, 76245, and 76246), asserts that the whole of test claim should be denied. The Chancellor's Office argues that a substantial part of the test claim should be denied, as most of the provisions of the test claim statutes were enacted by Senate Bill number 182, an act designed to bring California law into conformity with FERPA. The Chancellor's Office also argues that specific test claim statutes: (1) do not require any activities either pursuant to their plain language or because the activity is the result of an underlying discretionary activity; and (2) do not constitute new programs or higher levels of services as the activities were required by prior state and/or federal law.

The Chancellor's Office comments will be addressed as necessary in the discussion below.

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[12] Test claim 02-TC-34, p. 27-32.

[13] Finance Comments on 02-TC-34, dated September 15, 2003, p. 1, referencing test claim 02-TC-34, page 2.

[14] Test claim 02-TC-34 was deemed complete on July 8, 2003, and all claimants and interested parties were noticed. Issues of law raised by claimants and interested parties will be considered in the analysis, as necessary.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[15] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[16] "It's purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[17] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or requires a local agency or school district to engage in an activity or task.[18] The required activity or task must be new, constituting a "new program", or it must create a "higher level of service" over the previously required level of service under existing programs.[19]

The courts have defined a "program" that is subject to article XIII B, section 6 of the California Constitution ("hereinafter "article XIII B, section 6"), as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[20] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[21] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public"[22]. Finally, the newly required activity or higher level of service must impose costs on

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[15] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[16] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[17] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[18] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[19] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[20] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, supra, 44 Cal.3d 830, 835).

[21] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar*, supra, 44 Cal.3d 830, 835.

[22] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

local agencies as a result of local agencies' performance of the new activities or higher level of service that were mandated by the state statute or executive order.[23]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[24] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[25]

Issue 1: Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?

In its March 16, 2004 comments to the test claim, the Chancellor's Office asserts that much of the test claim should be denied as federally-mandated. The Chancellor's Office argues that many of the test claim statutes are necessary to implement the Clery Act and FERPA, and thus, do not constitute state-mandated activities. In addition to the federal mandate issue raised by the Chancellor's Office, some of the activities required by the test claim statutes raise court mandate issues, and therefore, may not be subject to article XIII B, section 6 of the California Constitution.

Article XIII B places spending limits on both the state and local governments, however, costs mandated by courts or federal law are expressly excluded from these spending limits. Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any "[a]ppropriations required to complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly."

Regarding federal mandates, Government Code section 17556, subdivision (c), provides that the Commission shall not find costs mandated by the state if the test claim statute imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. In addition, when analyzing federal law in the context of a test claim under article XIII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not required a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations" under article XIII B.[26]

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[23] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[24] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[25] *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[26] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; see also, Government Code section 17513.

However, when federal law imposes a mandate on the state, and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[27]

As will be further discussed below, the federal mandate issues and court mandate issues arise in regard to Education Code sections 49068, 49077, 76225, 76244, and 76234. Education Code sections 49068 and 76225 address the transfer of a pupil's permanent record and a student's appropriate records between schools and institutions of higher education and the rights of parents/student when a transfer occurs. Education Code sections 49077 and 76244 address the provision of pupil/student information in compliance with a court order or subpoena and the rights of parents/student prior to a districts compliance with the court order or subpoena. Education Code section 76234 addresses the notification of an alleged victim of sexual assault or physical abuse of any disciplinary action by the community college taken against any student for the alleged sexual assault or physical abuse and the results of any appeal.

The remaining test claim statutes address other areas of pupil and student record management including the establishment, maintenance, and destruction of records; charges for copies of transcripts; and regulations regarding evaluation of achievement. These test claim statutes address issues that exceed the scope of federal law or any court mandate, and therefore, are subject to article XIII B, section 6 of the California Constitution.

The following discussion will first analyze whether the provisions of the Clery Act and/or FERPA constitute federal mandates on K-12 school districts and community colleges. Then the discussion will analyze whether the activities required by Education Code sections 49068, 49077, 76225, and 76244 are federally-mandated. Finally, the discussion will analyze whether the provisions of Education Code sections 49077 and 76244 constitute a court mandate.

A. Do the provisions of the Clery Act and FERPA constitute federal mandates on K-12 school districts and/or community college districts?

The Clery Act:

The Chancellor's Office argues that any requirement of Education Code section 76234 is federally mandated under the Clery Act. Education Code section 76234 provides:

> Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assault or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. [¶] ... [¶].

The Clery Act was originally enacted as the "Crime Awareness and Campus Security Act of 1990" addressing the disclosure of campus security policies and campus crime statistics for

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[27] *Hayes, supra*, 11 Cal.App.4th at p. 1594.

postsecondary educational institutions.[28] The Crime Awareness and Campus Security Act of 1990 was enacted amid concerns that the proliferation of campus crime created a growing threat to students, faculty, and school employees.[29] Congress recognized that contemporary campus communities had become increasingly dangerous places and noted that in roughly eighty percent of campus crimes the perpetrator and the victim were both students.[30] These factors led Congress to find, among other things that, "students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or report occurrences of crime."[31]

The Crime Awareness and Campus Security Act of 1990 conditioned participation in any Title IV student financial assistance program and Federal Work-Study programs upon compliance with its provisions. These provisions require participating institutions to disclose crime statistics for the most recent three years, as well as disclose the institution's security policies.[32] In addition, the Crime Awareness and Campus Security Act of 1990 established the requirement that all participating institutions make timely reports to the campus community on crimes considered to be a threat to other students and employees that are reported to campus security or local law police agencies. The reports are to be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.[33]

The Crime Awareness and Campus Security Act of 1990 also made an amendment to FERPA, specifically 20 U.S.C. section 1232g (b), by providing that FERPA, "shall not be construed to prohibit an institution of postsecondary education from disclosing to an alleged victim of any crime of violence ... the results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime with respect to such crime."[34] Therefore, a postsecondary educational institution could disclose the results of a disciplinary proceeding regarding a crime of violence, including sexual assault, to the alleged victim of the crime without being in violation of FERPA's provisions.

In 1992 Congress amended the Crime Awareness and Campus Security Act of 1990 by enacting the Campus Sexual Assault Victim's Bill of Rights as part of the Higher Education Amendments of 1992 (Pub. L. No. 102-325, § 486 (c); see also 20 U.S.C. § 1092(f)). The Campus Sexual Assault Victim's Bill of Rights provides victims of sexual assault on campus certain basic rights

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[28] Title II of the Student Right to Know and Campus Security Act (Pub.L. No. 101-542) (Nov. 8, 1990) (104 Stat. 2381) amending 20 U.S.C. sections 1092, 1094, and 1232g.

[29] *Havlik v. Johnson & Wales University* (1st Cir. 2007) 509 F.3d 25, 30, citing to H.R.Rep. No. 101-518, p. 7 (1990) and Pub.L. No. 101-542, section 202, 104 Stat. 2381.

[30] *Ibid.*

[31] Section 202 of Public Law 101-542.

[32] Title 20 United States Code section 1092 (f), as amended by section 204 of Pub.L. No. 101-542.

[33] Title 20 United States Code section 1092 (f)(3), as amended by section 204 of Pub.L. No. 101-542.

[34] Title 20 United States Code section 1232g (b), as amended by section 203 of Pub.L. No. 101-542.

and requires participating institutions to develop and distribute a policy statement concerning their campus sexual assault programs targeting the prevention of sex offenses.[35] The policy must address the procedures to be followed if a sex offense occurs. As relevant to this test claim, the policy is required to address:

> ... Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that--
>
> [¶] ... [¶]
>
> ... both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.[36]

In 1998, the Crime Awareness and Campus Security Act of 1990 was amended and renamed the Clery Act. The activity stated immediately above remained substantively the same.

Thus, under the Clery Act participating community college districts are required to perform the following activity:

> Inform both the accuser and the accused of the outcome of any campus disciplinary proceeding brought alleging a sexual assault. (20 U.S.C. § 1092(f)(8)(B)(iv)(II).)

This requirement is imposed directly upon each eligible institution, including community college districts, participating in any student financial assistance program authorized by Title IV of the HEA and/or Federal Work-Study Programs.[37] Therefore, the provisions of the Clery Act are applicable to community colleges and directly imposed on community colleges as eligible institutions participating in student financial assistance programs authorized by Title IV.

However, the provisions of the Clery Act are conditions for the participation in Title IV student financial assistance programs and Federal Work Study programs. Community college districts are not obligated to accept the conditions, and thus, community college districts are not *legally* compelled to comply with the provisions of the Clery Act. As a result, it is necessary to determine whether community college districts are *practically* compelled to comply with the provisions of the Clery Act. The court in *Hayes v. Commission on State Mandates* discussed this type of "cooperative federalism" scheme employed by FERPA noting that:

> [T]he vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. ... However, "certain regulatory standards imposed by the federal government under 'cooperative

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[35] Title 20 United States Code section 1092 (f), as amended by section 486 of Pub.L. No. 102-325.

[36] Title 20 United States Code section 1092 (f)(7)(B)(iv)(II), as amended by section 486 of Pub.L. No. 102-325 (currently 20 U.S.C. § 1092 (f)(8)(B)(iv)(II)).

[37] All California Community Colleges existing during the 2001-2002 fiscal year participated in the Federal Pell Grant Program and the Federal Supplemental Educational Opportunity Grant Program, see attached Student Financial Aid Awards report from the Chancellor's Office Data Mart. For a list of Title IV student financial assistance programs see title 34 of the Code of Federal Regulations part 668.1.

federalism' schemes are coercive on the states and localities in every practical sense." [38]

The court went on to say that "[t]he test for determining whether there is a federal mandate is whether compliance with federal standards 'is a matter of true choice.'"[39] To make this determination the court set out various factors, including: (1) the nature and purpose of the federal program, (2) whether its design suggests an intent to coerce, and (3) any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.[40]

The nature and purpose of the Clery Act is to provide protection to the campus community against specified criminal offenses and to provide rights to victims of sexual offenses by requiring the provision of crime statistics, timely notification of the occurrence of crimes considered a threat to students and employees, notification of campus sexual assault programs and the procedures followed once a sex offense has occurred. This purpose was reiterated in 1996 when Congress, displeased with the Department of Education's efforts to enforce the Clery Act, passed a resolution calling for the Department of Education to make "'[s]afety of students ... the number one priority.'"[41]

Although the nature and purpose of the Clery Act is significant, the intent to coerce participation, however, does not appear to be. The Chancellor's Office asserts that the provisions of the Clery Act applies to "each institution receiving federal financial assistance (which includes all community college districts) ... ."[42] However, as discussed above, the language of the Clery Act limits its application to institutions participating in Title IV student financial assistance programs and/or Federal Work Study programs, not on *all* federal financial assistance. In addition, the Clery Act does not impose any penalties or create any private cause of action against an institution that chooses not to participate in Title IV student financial assistance programs or Federal Work Study programs. Unlike in *City of Sacramento*, community colleges do not face certain and severe penalties such as full and double taxation.[43] Nor do community colleges face a "barrage of litigation with no real defense" as in *Hayes*.[44] In fact, even if a community college does participate in Title IV student financial assistance programs or Federal Work Study programs, the Clery Act specifically provides that it does not "create a cause of action against any institution of higher education or any employee of such institution for any civil liability; ... or establish any standard of care."[45] Rather, the Secretary of Education is given sole authority to enforce the Clery Act and may limit, suspend, or terminate an institution's participation or

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[38] *Hayes*, *supra*, 11 Cal.App.4th at p. 1581-1582, citing to *City of Sacramento*, *supra*, 50 Cal.3d at p. 73-74.

[39] *Ibid.*

[40] *Ibid.*

[41] *Havlik*, *supra*, 509 F.3d at p.31, citing to H.R.Rep. No. 104-875, p. 61 (1996).

[42] Chancellor's Office Comments on 02-TC-34, dated March 16, 2004, p. 5.

[43] *City of Sacramento*, *supra*, 50 Cal.3d at p. 74.

[44] *Hayes*, *supra*, 11 Cal.App.4th at p. 1592.

[45] Title 20 United States Code section 1092 (f)(14).

impose a civil penalty upon a participating institution, however, as stated these sanctions only apply to *participating* institutions.

In regard to practical consequences, an institution's noncompliance with the Clery Act could result in increased hurdles for students that utilize Title IV student financial assistance programs and/or Federal Work Study programs to assist in the costs of attending community college. However, there is no evidence in the record regarding the extent that community college students as a whole rely on Title IV student financial assistance programs and/or Federal Work Study programs to attend community colleges.

In sum, although the purpose of the Clery Act is very significant, in light of the lack of intent to coerce participation, and the lack of any certain and severe penalties for failing to comply with the Clery Act outside of forgoing participation in Title IV student financial assistance programs and Federal Work Study programs, staff finds that the provisions of the Clery Act (20 U.S.C. § 1092 (f)) do not constitute federal mandates upon community college districts. Thus, the provisions of Education Code section 76234 are not federally-mandated by the Clery Act. The remaining issues regarding whether Education Code section 76234 mandates a new program or higher level of service under article XIII B, section 6, are discussed on page 52.

FERPA:

As noted above, FERPA was enacted to protect parents and students' right to access the student's records[46] and "to protect [parents' and students'] rights to privacy by limiting the transferability of their records without their consent."[47] FERPA conditions federal funds to an educational agency or institution on the agency or institution's compliance with the provisions of FERPA and its implementing regulations.[48]

As relevant to this test claim, FERPA provides that an educational agency or institution may transfer the education record of a student, without the written consent of the student or student's parents, to:

> officials of other schools or school systems in which the student seeks or intends to enroll, *upon condition* that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record.[49]

FERPA further provides:

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records

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[46] Title 20 United States Code section 1232g (a)(1)(A). See 20 United States Code section 1232g (d) for applicability of FERPA's provisions to students that have attained eighteen years of age or that are attending institutions of postsecondary education.

[47] *United States v. Miami University* (6th Cir. 2002) 294 F.3d 797, 806.

[48] Title 20 United States Code section 1232g; 34 Code of Federal Regulations part 99.1 (Nov. 15, 2007).

[49] Title 20 United States Code section 1232g (b)(1)(B), Emphasis added.

other than directory information, or as is permitted under paragraph (1) of this subsection, unless--

[¶] ... [¶]

... such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.[50]

FERPA's implementing regulations further explain that an educational agency may disclose personally identifiable information from an education record of a student if the disclosure is to comply with a judicial order or lawfully issued subpoena and "... only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance ... ."[51]

In regard to students eighteen years of age or attending an institution of postsecondary education FERPA provides:

... [W]henever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

Thus, any notification or right given to parents of pupils in K-12 schools under FERPA is also accorded to students in community college. In addition, FERPA provides that educational agencies or institutions must:

... effectively [inform] the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by [20 U.S.C. section 1232g].[52]

Therefore, under FERPA K-12 school districts and community college districts are required to perform the following activities:

1. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the transfer of a students education records, provide a copy of the education records if desired by the parents, and give the parents an opportunity for a hearing to challenge the content of the record. (20 U.S.C. § 1232g (b)(1)(B).)
2. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of a lawfully issued subpoena or court order seeking "personally identifiable information" in advance of compliance with the lawfully issued subpoena or court order. (20 U.S.C. § 1232g (b)(2)(B).)

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[50] Title 20 United States Code section 1232g (b)(2)(B).

[51] 34 C.F.R. section 99.31, subdivision (a)(9).

[52] Title 20 United States Code section 1232g (e).

3. Inform the parent of a student or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the rights accorded them by FERPA (20 U.S.C. § 1232g). (20 U.S.C. § 1232g (e).)

These requirements are imposed directly upon "educational agencies and institutions" in receipt of any federal funds, including K-12 school districts and community college districts.[53]

However, because the requirements of FERPA and its implementing regulations are conditions for the receipt of federal funds, K-12 school districts and community college districts are not obligated to accept the conditions, and may choose to not receive federal funds and thus avoid the conditions imposed by FERPA. Thus, K-12 school districts and community college districts are not *legally* compelled to comply with the provisions of FERPA, and therefore, it is necessary to determine whether K-12 school districts and community college districts are *practically* compelled to comply with the provisions of FERPA.

The court in *Hayes v. Commission on State Mandates* discussed this type of "cooperative federalism" scheme employed by FERPA noting that:

> [T]he vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than direct compulsion. … However, "certain regulatory standards imposed by the federal government under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense."[54]

The court went on to say that "[t]he test for determining whether there is a federal mandate is whether compliance with federal standards 'is a matter of true choice.'"[55] To make this determination the court set out various factors, including: (1) the nature and purpose of the federal program, (2) whether its design suggests an intent to coerce, and (3) when state and/or local participation began.[56]

Here, as noted above, the nature and purpose of FERPA is to "protect [parents' and students'] rights to privacy by limiting the transferability of their records without their consent."[57] Congress' high regard for the privacy rights of students was noted by the court in *United States v. Miami University* (6th Cir. 2002) 294 F:3d 797. Citing to 20 U.S.C. section 1232i, the court stated:

> Because Congress holds student privacy interests in such high regard:
>
> > the refusal of a[n] … educational agency or institution … to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the

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[53] See *Hayes*, *supra*, 11 Cal.App.4th at p. 1584.

[54] *Hayes*, *supra*, 11 Cal.App.4th at p. 1581-1582, citing to *City of Sacramento*, *supra*, 50 Cal.3d at p. 73-74.

[55] *Ibid.*

[56] *Ibid.*

[57] *United States v. Miami University*, *supra*, 294 F.3d at p. 806.

> grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance.
>
> In other words, Congress places the privacy interests of students and parents above the federal government's interest in obtaining necessary data and records.[58]

With regard to whether the design of the federal program suggests an intent to coerce, as noted above, the receipt of all federal funds by K-12 school districts and community college districts is conditioned on compliance with the provisions of FERPA and its implementing regulations. Failure to comply with the provisions of FERPA and its implementing regulations would jeopardize funds which have been made available under programs administered by the Secretary of State. As noted by the court in *Hayes v. Commission on State Mandates*, federal funding to education is pervasive.[59] Failure to comply with the provisions of FERPA would result in a loss of all federal funding received by K-12 school districts and community college districts.

In addition, K-12 school districts and community college districts have complied with FERPA and received federal funds for a significant period of time. Education Code sections 49060 and 76200 set forth the legislative intent of Education Code sections 49060 – 49085 and 76200 - 76246. As enacted in 1976, Education Code section 49060 provided in relevant part:

> It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 [FERPA] regarding parental access to, and the confidentiality of, pupil records in order to insure the *continuance of federal education funds* to public educational institutions within the state . . . .[60]

Education Code section 76200 substantively mirrors the language of Education Code section 49060 quoted above. The language of sections 49060 and 76200, as enacted in 1976, was made operative on April 30, 1977. Thus, receipt of federal funds by K-12 school districts and community college districts has been conditioned upon compliance with the provisions of FERPA since at least 1977. In addition, the language of section 49060 and 76200 indicates the reliance on federal funds conditioned on compliance with the provisions of FERPA for at least 30 years.

In sum, because of the purpose of FERPA to protect the privacy rights of parents and students and Congress' high regard for these rights, and the loss of all federal funds by K-12 school districts and community college districts, and the extent to which these funds are relied upon, staff finds that the following provisions of FERPA (20 U.S.C. § 1232g) and its implementing regulations (34 C.F.R. § 99.1 et seq.) constitute federal mandates on K-12 school districts and community college districts:

1. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the transfer of a students education records, provide a copy of the education records if desired by the parents, and give the

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[58] *Id* at 807.

[59] *Hayes v. Commission on State Mandates*, supra, 11 Cal.App.4th 1564, 1584.

[60] Education Code section 49060 (Stats. 1976, ch. 1010). (Emphasis added.)

parents an opportunity for a hearing to challenge the content of the record. (20 U.S.C. § 1232g (b)(1)(B).)

2. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of a lawfully issued subpoena or court order seeking "personally identifiable information" in advance of compliance with the lawfully issued subpoena or court order. (20 U.S.C. § 1232g (b)(2)(B).)
3. Inform the parent of a student or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the rights accorded them by FERPA (20 U.S.C. § 1232g). (20 U.S.C. § 1232g (e).)

To the extent that these same activities are mandated by a test claim statute, they are not subject to article XIII B, section 6 of the California Constitution.[61]

Do the requirements of the test claim statutes exceed the federal mandates of FERPA?

Government Code section 17556, subdivision (c), provides that the Commission shall not find costs mandated by the state if the test claim statute imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. In addition, the court in *Hayes v. Commission on State Mandates* held that when the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[62] Thus, it is necessary to determine whether the mandates of the test claim statutes exceed the federal mandates of FERPA.

Transfer of Education Records Between Schools (Ed. Code, §§ 49068 and 76225):

Education Code sections 49068 and 76225 address the transfer of a pupil's permanent record and a student's appropriate records between schools and institutions of higher education. Section 49068 provides in relevant part:

> Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. . . .

The language of section 76225 substantively mirrors the language of Education Code section 49068 as made applicable to community college districts. Except that section 76225 provides that "appropriate records" shall be transferred upon a request from the student.

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[61] *Hayes, supra*, 11 Cal.App.4th at p. 1581.

[62] *Hayes, supra*, 11 Cal.App.4th at p. 1594.

The plain language of Education Code sections 49068 and 76225 require K-12 school districts and community colleges to perform the following activities:

1. Transfer a pupil's permanent record, or a copy of the permanent record, to the K-12 school district or private school where the pupil intends to enroll upon the request of the K-12 school district or private school where a pupil intends to transfer. (Ed. Code, § 49068.)
2. Transfer appropriate records or a copy thereof to a community college or public or private institution of postsecondary education within California that a student intends to transfer to upon request from the student. (Ed. Code, § 76225.)
3. Notify a parent of his or her right to receive a copy of the pupil's permanent record and the right to a hearing to challenge the content of the pupil's permanent record when the K-12 school district requests the transfer of a pupil's permanent record from the pupil's former K-12 school district or private school. (Ed. Code, § 49068.)
4. Notify a student of his or her right to receive a copy of his/her appropriate record and his or her right to a hearing to challenge the content of the record when he or she transfers to another community college or public or private institution of postsecondary education and requests the transfer of the record. (Ed. Code, § 76225.)

As discussed above, the provisions of FERPA require K-12 school districts and community college districts to:

1. Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the transfer of a student's education records, provide a copy of the education records if desired by the parents, and give the parents an opportunity for a hearing to challenge the content of the record. (20 U.S.C. § 1232g (b)(1)(B).)
2. Inform the parent of a student or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of the rights accorded them by FERPA (20 U.S.C. § 1232g). (20 U.S.C. § 1232g (e).)

As shown by the above requirements, FERPA (specifically 20 U.S.C. § 1232g (b)(1)(B) and (e)) requires the notification of parents/students of the transfer of a student's "*education record*" and the parents'/student's right to a copy of the "*education record*" or to contest the content of the "*education record.*" While Education Code section 49068 requires notification of a parent upon the transfer of a pupil's "*permanent record*" and Education Code section 76225 requires the notification of a student upon the transfer of his/her "*appropriate record.*" In order to determine whether the requirements of Education Code sections 49068 and 76225 exceed those of FERPA, it must be determined whether "permanent record" and "appropriate record" is greater in scope than "education record."

Title 20 United States Code section 1232g (a)(4)) defines the term "education records" as used in FERPA. Section 1232g (a)(4) broadly defines "education records" as records, files, documents, and other materials which contain information directly related to a student, and are maintained by an educational agency or institution or by a person acting for such agency or institution. Section 1232g (a)(4) further provides that "education records" does not include:

> (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;
>
> (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;
>
> (iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or
>
> (iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

The scope of the terms "permanent record" and "appropriate records" are undefined in the governing statutes. In order to determine the meaning of these terms, it is necessary to read these terms in the context of the whole statutory scheme and not as individual parts or words standing alone.[63] The Legislature, through the enactment of Education Code sections 49062 and 76220 place the authority to define what pupil and student records are to be established in the hands of the Board of Education and the Board of Governors.[64] In addition to defining "mandatory permanent pupil records," the Board of Education sets forth definitions for "mandatory interim pupil records," and "permitted pupil records."[65] The Board of Education's regulations then delineates what information each record shall include.[66]

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[63] *Fontana Unified School Dist., supra*, 45 Cal.3d at p. 218.

[64] Education Code sections 49062 and 76220 are further discussed below.

[65] California Code of Regulations, title 5, section 432, subdivision (b)(2)(B), Register 77, No. 39 (Sept. 23, 1977).

[66] *Ibid.*

The Board of Education's regulations provide that "mandatory permanent pupil records" include:

(A) Legal name of pupil.

(B) Date of birth.

(C) Method of verification of birth date.

(D) Sex of pupil.

(E) Place of birth.

(F) Name and address of parent of minor pupil.

1. Address of minor pupil if different than the above.

2. An annual verification of the name and address of the parent and the residence of the pupil.

(G) Entering and leaving date of each school year and for any summer session or other extra session.

(H) Subjects taken during each year, half-year, summer session, or quarter.

(I) If marks or credit are given, the mark or number of credits toward graduation allows for work taken.

(J) Verification of or exemption from required immunizations.

(K) Date of high school graduation or equivalent.

All of the above examples of "permanent records" constitute "education records" as defined by FERPA, and do not fall within any of the exceptions to the definition of "education records" as set forth by FERPA. Thus, staff finds that "permanent record" as used in Education Code section 49062 does not exceed the scope of FERPA's definition of "education records."

The term "appropriate records," as used in Education Code section 76225, must be viewed in the context of the whole of Education Code section 76225, because the Board of Governors' regulations do not define "appropriate records." "Appropriate records" is used in section 76225 within the context of a student transferring from one community college or public or private institution of postsecondary education to another within the state. It follows that "appropriate records" is limited to those education records appropriate for the transfer of a student. Thus, the term "education records" as used in FERP A is inclusive of "appropriate records" as used in Education Code section 76225.

As a result, staff finds that the following activities required by Education Code sections 49068 and 76225 do not exceed the provisions of FERPA, and therefore, are not subject to article XIII B, section 6 of the California Constitution:

1. Notify a parent of his or her right to receive a copy of the pupil's permanent record and the right to a hearing to challenge the content of the pupil's permanent record when the K-12 school district requests the transfer of a pupil's permanent record from the pupil's former K-12 school district or private school. (Ed. Code, § 49068.)
2. Notify a student of his or her right to receive a copy of his/her appropriate record and his or her right to a hearing to challenge the content of the record when he or she transfers to

another community college or public or private institution of postsecondary education and requests the transfer of the record. (Ed. Code, § 76225.)

However, the following activities required by Education Code sections 49068 and 76225 exceed the provisions of FERPA, and are therefore, subject to article XIII B, section 6 of the California Constitution:

1. Transfer a pupil's permanent record, or a copy of the permanent record, to the K-12 school district or private school where the pupil intends to enroll upon the request of the K-12 school district or private school where a pupil intends to transfer. (Ed. Code, § 49068.)
2. Transfer appropriate records or a copy thereof to a community college or public or private institution of postsecondary education within California that a student intends to transfer to upon request from the student. (Ed. Code, § 76225.)

Provision of Student Information in Compliance with a Court Order or Subpoena (Ed. Code, §§ 49077 and 76244):

Education Code sections 49077 and 76244 address the provision of pupil/student information in compliance with a court order or subpoena. Specifically, section 49077 provides:

> Information concerning a student shall be furnished in compliance with a court order or a lawfully issued subpoena. The school district shall make a reasonable effort to notify the parent or legal guardian and the pupil in advance of compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order.

The language of section 76244 substantively mirrors the language of Education Code section 49077 as made applicable to community college districts. The plain language of Education Code sections 49077 and 76244 require K-12 school districts and community college districts to perform the following activities:

1. Furnish information concerning a pupil in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 49077.)
2. Furnish information concerning a student in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 76244.)
3. Make reasonable effort to notify the parent or legal guardian and the pupil of the lawfully issued subpoena or court order, if lawfully possible within the requirements of the court order, in advance of compliance with a lawfully issued subpoena or court order. (Ed. Code, § 49077.)
4. Make reasonable effort to notify the student of the lawfully issued subpoena or court order, if lawfully possible within the requirements of the court order, in advance of compliance with a lawfully issued subpoena or court order. (Ed. Code, § 76244.)

The claimants note that the test claim does not allege furnishing information in compliance with a court order or lawfully issued subpoena,[67] however, as shown by the plain language of sections 49077 and 76244, K-12 school districts are required to perform the above listed activities.

As discussed above, the provisions of FERPA require K-12 school districts and community college districts to:

> Notify a student's parents or the student, if he/she is eighteen years of age or older or is attending an institution of postsecondary education, of a lawfully issued subpoena or court order seeking "personally identifiable information" in advance of compliance with the lawfully issued subpoena or court order. (20 U.S.C. § 1232g (b)(2)(B).)

However, when comparing FERPA with the requirement of Education Code section 49077 and 76244, FERPA requires the notification of parents/students of a lawfully issued subpoena or court order seeking "*personally identifiable information*" in advance of compliance, while Education Code section 49077 and 76244 require notification of parents/students of a lawfully issued subpoena or court order seeking "*information concerning* [*the*] *student.*" In order to determine whether the requirements of Education Code sections 49077 and 76244 exceed those of FERPA (specifically 20 U.S.C. § 1232g (b)(2)(B)), it must be determined whether "information concerning a student" (as provided by Ed. Code, §§ 49077 and 76244) equates to "personally identifiable information" (as provided by FERPA). To make this determination it is necessary to read Education Code sections 49077 and 76244 in light of the statutory scheme as a whole.

Education Code section 49077 was adopted as part of article 5 of Chapter 6.5 of part 27 of division 4 of title 2 of the Education Code which addresses the privacy of pupil records. Similarly, Education Code section 76244 was adopted as part of article 1 of Chapter 1.5 of part 47 of division 7 of title 3 of the Education Code which addresses the privacy of student records. Education Code sections 49061 and 76210, which set forth the definitions of their respective chapters, provide, in relevant part, that "pupil/student record" means any item of information directly related to an identifiable pupil/student … ." Read in the context of the statutory scheme as a whole, "information concerning a student," as referenced in Education Code sections 49077 and 76244, refers to information from a pupil/student record which consists of information directly related to an identifiable pupil/student. Based on the context of the statutory scheme as a whole, both FERPA and Education Code sections 49077 and 76244 require a K-12 school district and community college districts to notify a parent/student of a lawfully issued subpoena or court order seeking information of an identifiable pupil/student. Thus, the following activities required by Education Code sections 49077 and 76244 do not exceed the provisions of FERPA.

Staff finds that the following activities required by Education Code sections 49077 and 76244 constitute federal mandates, and therefore, are not subject to article XIII B, section 6 of the California Constitution:

1. Make reasonable effort to notify the parent or legal guardian and the pupil of the lawfully issued subpoena or court order, if lawfully possible within the requirements of the court

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[67] Claimants' response to Chancellor's Office Comments on 02-TC-34, *supra*, p. 14.

order, in advance of compliance with a lawfully issued subpoena or court order. (Ed. Code, §.49077.)

2. Make reasonable effort to notify the student of the lawfully issued subpoena or court order, if lawfully possible within the requirements of the court order, in advance of compliance with a lawfully issued subpoena or court order. (Ed. Code, § 76244.)

However, the following activities required by Education Code sections 49077 and 76244 exceed the provisions of FERPA:

1. Furnish information concerning a pupil in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 49077.)

2. Furnish information concerning a student in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 76244.)

These activities may be subject to article XIII B, section 6 of the California Constitution if they are not considered mandates of the court. This issue is analyzed immediately below.

B. Do the provisions of Education Code sections 49077 and 76244 constitute a court mandate?

Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any "[a]ppropriations required for purposes of complying with mandates of the *courts* or the federal government which, without discretion,[68] require an expenditure for additional services or which unavoidably make the providing of existing services more costly." [Emphasis added.] Article XIII B places spending limits on both the state and local governments. Costs mandated by the courts are expressly excluded from these ceilings.[69] Since court mandates are excluded from the constitutional spending limit, reimbursement under article XIII B, section 6 is not required for costs incurred to comply with a court mandate.

Education Code sections 49077 and 76244 require K-12 school districts and community college districts to:

> Furnish information concerning a pupil/student in compliance with a court order or lawfully issued subpoena. (Ed. Code, §§ 49077 and 76244.)

As shown by the language of sections 49077 and 76244, furnishing information concerning a pupil/student is triggered by either: (1) a court order, or (2) a subpoena.

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[68] In *City of Sacramento v. State of California, supra,* 50 Cal. 3d 51, which interpreted section XIII B, section 9, the court held that "without discretion" as used in section 9 (b) is not the same as legal compulsion. Rather it means that the alternatives are so far beyond the realm of practical reality that they leave the state without discretion to depart from the federal standards. Thus, the court held that the state enacted the test claim statute in response to a federal mandate for purposes of article XIII B, so the state statute was not reimbursable. (*Id.* at p. 74). Although the context in *City of Sacramento* was federal mandates analyzed under article XIII B, section 9, subdivision (b), the analysis is instructive in this case.

[69] *Id.* at page 57.

The required activity of furnishing information concerning a pupil/student when triggered by a court order leaves a K-12 school district and community college district without discretion to depart from the activity. Since the activity is required to comply with a court-ordered mandate, furnishing information concerning a pupil/student in compliance with a court order is not subject to article XIII B, section 6 because it falls within the exclusion of article XIII B, section 9, subdivision (b). As a result, staff finds that furnishing information concerning a pupil/student in compliance with a court order constitutes a court mandate, and therefore, is not subject to article XIII B, section 6 of the California Constitution.

Subpoenas are writs or orders directed to a person that require the person's attendance at a particular time and place to testify as a witness, and/or require a witness to produce any documents or things under the witness' control which the witness is bound by law to produce in evidence.[70] Failure to comply with a lawfully issued subpoena may be punished as a contempt of court and a forfeiture of $500 and all damages sustained by the aggrieved party resulting from the person's failure to comply.[71] For these reasons, K-12 school districts and community colleges districts are left without discretion to comply with a lawfully issued subpoena. As distinguished from a court order, however, subpoenas may be lawfully issued by various entities and individuals, including the courts.[72] To the extent that K-12 school districts or community colleges are required to furnish information concerning a pupil/student in compliance with a lawfully issued subpoena *issued by a court*, this required activity also constitutes a court-mandate, and is not subject to article XIII B, section 6 of the California Constitution.

To the extent that K-12 school districts or community colleges are required to furnish information concerning pupils/students in compliance with lawfully issued subpoenas issued by non-court entities, such as administrative agencies, this required activity does not fall within the court-mandate exclusion and is therefore subject to article XIII B, section 6 of the California Constitution. As a result, staff finds that the following activity is required by Education Code sections 49077 and 76244 does not constitute court mandates, and therefore, is subject to article XIII B, section 6 of the California Constitution:

> Furnish information concerning a pupil/student in compliance with a lawfully issued subpoena issued by a non-court entity. (Ed. Code, §§ 49077 and 76244.)

Issue 2: Do the test claim statutes mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution?

The following discussion will analyze whether the test claim statutes, including the non-federal/court mandate portions of Education Code sections 49068, 49077, 76225, and 76244, mandate new programs or higher levels of service on K-12 school districts and community college districts.

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[70] Code of Civil Procedure section 1985.

[71] Code of Civil Procedure sections 1991 and 1992.

[72] Courts, attorneys of record, administrative agencies, and grand juries. See Code of Civil Procedure section 1985, Government Code section 11181, and Penal Code section 939.2.

Education Code sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, and 76246 are all part of two larger statutory schemes (Education Code sections 49060 – 49085, and 76200 – 76246) governing K-12 school district and community college district management of pupil and student records. Because the statutory scheme governing K-12 school districts (Education Code sections 49060 – 49085) address many of the same issues as the scheme governing community college districts (Education Code sections 76200 – 76246), many of the code sections substantively mirror each other. For ease of discussion, the test claim statutes that substantively mirror each other will be discussed together.

Establishment, Maintenance, and Destruction of Records (Ed. Code, §§ 49062 and 76220):

Do Education Code sections 49062 and 76220 mandate any activities?

Education Code sections 49062 and 76220 address the establishment, maintenance, and destruction of pupil records by K-12 school districts and student records by community college districts. Section 49062 provides:

> School districts shall establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. Pupil records shall include a pupil's health record. Such regulations shall establish state policy as to what items of information shall be placed into pupil records and what information is appropriate to be compiled by individual school officers or employees under the exception to pupil records provided in subdivision (b) of Section 49061. No pupil records shall be destroyed except pursuant to such regulations or as provided in subdivisions (b) and (c) of Section 49070.

The language of Education Code section 76220 substantively mirrors the language of Education Code section 49062 as made applicable to community college districts and community college students, except for the absence of the language, "Pupil records shall include a pupil's health record."

Pursuant to the plain language of sections 49062 and 76220, the establishment, maintenance, and destruction of pupil/student records must be done according to regulations adopted by the State Board of Education and the Board of Governors. Additionally, in regard to K-12 school districts pupil records are required to include a pupil's health record. Thus, sections 49062 and 76220 require K-12 school districts and community college districts act in accordance with the regulations adopted the State Board of Education and the Board of Governors when establishing, maintaining, and destroying pupil/student records.

The claimants appear to assert that an emphasis should be placed on the "shall establish, maintain and destroy student records" portion of sections 49062 and 76220, and thus, the activities required by sections 49062 and 76220 are to establish, maintain, and destroy student records.[73] This interpretation of Education Code sections 49062 and 76220 would render the language "in accordance to regulations adopted by the State Board of Education [or Board of Governors]" mere surplusage contrary to the rules of statutory construction.[74] Therefore,

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[73] Claimants' response to Chancellor's Office Comments on 02-TC-34, dated April 23, 2004, p. 8.

[74] *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 218.

Education Code section 49062 and 76220 require K-12 school districts and community college districts to perform the following activities:

1. Establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. (Ed. Code, § 49062.)
2. Include a pupil's health record in pupil records. (Ed. Code, § 49062.)
3. Establish, maintain, and destroy student records according to regulations adopted by the Board of Governors. (Ed. Code, § 76220.)

The California Supreme Court held in *Kern High School Dist.* that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[75]

As relevant to this discussion, Education Code section 49062 and 76220 require that K-12 school districts and community college districts destroy pupil/student records according to regulations adopted by the State Board of Education and the Board of Governors, respectively. The regulations adopted by the State Board of Education referenced in Education Code section 49062 are set forth in California Code of Regulations, title 5, sections 430-438 and 16020-16028. Title 5, sections 430 and 432 set forth three types of pupil records: (1) mandatory permanent pupil records; (2) mandatory interim pupil records; and (3) permitted pupil records.[76]. Title 5, section 437 provides that "mandatory permanent pupil records" shall be preserved in perpetuity by all California schools, "mandatory interim pupil records" may be adjudged to be disposable when the student leaves the district or when their usefulness ceases, and "permitted pupil records" may be destroyed when their usefulness ceases. As indicated by the State Board of Education's regulations, permanent pupil records are not subject to destruction by a K-12 school district. Rather, the State Board of Education's regulations *prohibit* the destruction permanent pupil records, and therefore, are not required to be destroyed pursuant to Education Code section 49062. In addition, the destruction of interim and permitted pupil records by K-12 school districts is within the discretion of the districts but is not mandated by the state. Decisions made by a K-12 school district, rather than the state, to incur the costs of a statutory requirement do not constitute state-mandated activities.[77] Thus, the requirement of Education Code section 49062 to destroy pupil records according to regulations adopted by the State Board of Education does not constitute a state-mandated activity.

The regulations adopted by the Board of Governors referenced in Education Code section 76220 regarding the destruction of student records are set forth in California Code of Regulations, title 5, sections 59020 – 59033. Title 5, sections 59022 – 59025 set forth a procedure in which the governing board of a district classifies records as "Class-1 Permanent," "Class 2-Optional," or "Class 3-Disposable." These sections provided that specific records, including student records regarding enrollment and scholarship for each student are to be classified as "Class 1-Permanent" records. Districts may classify records "Class 2-Optional" if they are worthy of

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[75] *Kern High School Dist., supra*, 30 Cal 4th at p. 743.

[76] California Code of Regulations, title 5, sections 430 and 432, Register 77, No. 39, (Sept. 23, 1977).

[77] *San Diego Unified School Dist., supra*, 33 Cal. 4th at p. 880.

further preservation but not classified as "Class 1-Permanent." The remaining records that a district does not classify as "Class 1-Permanent" or "Class 2-Optional" are to be classified as "Class 3 – Disposable." Only records classified by the district as "Class 3 Disposable" records may be destroyed.

Title 5, section 59026 provides in relevant part that "Generally, a Class 3-Disposable record, unless otherwise specified in this Subchapter, *should* be destroyed during the third college year after the college year in which it originated … ." Title 5, sections 59027 – 59033 set forth the procedures for destruction of records. These sections provide that after a district's chief administrative officer has classified records "Class 3-Disposable" and submitted this list of records recommended to be destroyed, a district governing board must then approve or disapprove the recommendation. Title 5, section 59029 then provides in relevant part, "*Upon the order of the governing board* that specified records shall be destroyed, such records shall be permanently destroyed … ." Thus, in order for a student record to be destroyed, a community college district must: (1) classify a record to be destroyed, and (2) the governing board of the district must approve and order those records to be destroyed. Like with K-12 school districts, the decision to destroy student records is within a community college district's discretion. Therefore, the requirement of Education Code section 76220 to destroy student records according to regulations adopted by the Board of governors does not constitute a state-mandated activity.

Staff finds that the requirement of Education Code sections 49062 and 76220 to destroy pupil/student records according to regulations adopted by the State Board of Education/Board of Governors does not constitute a state-mandated activity. However, staff finds that Education Code sections 49062 and 76220 impose the following state-mandated activities on K-12 school districts and community college districts:

1. Establish and maintain pupil records according to regulations adopted by the State Board of Education. (Ed. Code, § 49062.)
2. Include a pupil's health record in pupil records. (Ed. Code, § 49062.)
3. Establish and maintain student records according to regulations adopted by the Board of Governors. (Ed. Code, § 76220.)

Do the activities mandated by Education Code sections 49062 and 76220 constitute new programs or higher levels of service for K-12 school districts and community college districts?

In order for state-mandated activities to constitute new programs or higher levels of service, the activities must be new in comparison with the pre-existing scheme.[78] Here, the claimants have pled Education Code section 49062, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 10933, and renumbered to current Education Code section 49062 by Statutes 1976, chapter 1010. Similarly, the claimants have pled Education Code section 76220, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 25430.2, and renumbered to current Education Code section 76220 by Statutes 1976, chapter 1010.

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[78] *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

Section 49062 (formerly section 10933) as added in 1975, mandates that K-12 school districts establish and maintain pupil records in accordance with regulations adopted by the State Board of Education. In 1980, section 49062 was amended to include the following state-mandated activity, "Include a pupil's health record in pupil records."[79]

In addition, as pled by the claimants, section 76220 mandates community college districts to establish and maintain student records according to regulations adopted by the Board of Governors.

However, in 1963 former Education Code section 1031 provided in relevant part:

> The governing board of every school districts shall:
>
> [¶] .... [¶]
>
> Make or maintain such other records or reports as are required by law.[80]

Also, title 5 of the California Code of Regulations section 432, as amended in 1977, provides in relevant part:

> "Mandatory Interim Pupil Records" are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation. Such records include:
>
> [¶] ... [¶]
>
> Health information ... .[81]

The requirements of former Education Code sections 1031 was made applicable to community college districts by former Education Code section 25422.5 which provided:

> Except as otherwise provided in this code, the powers and duties of community colleges are such as are assigned to high school boards.[82]

Former Education Code section 1031 and 25422.5 were in existence in 1974[83] and were not repealed until the renumbering of the Education Code by Statutes 1976, chapter 1010.[84] As

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[79] Statutes 1980, chapter 1347.

[80] Former Education Code section 1031, subdivision (d) (Stats. 1963, ch. 629).

[81] California Code of Regulations, title 5, section 432, subdivision (b)(2)(B), Register 77, No. 39 (Sept. 23, 1977).

[82] Former Education Code section 25422.5 (Stats. 1970, ch. 102).

[83] See attachments "Education Code 1973 – Sections 1-12851" and "Education Code 1973 – Sections 20101-45065." The "Foreword" of these attachments note that these editions of the Education Code show "all sections as they are in effect on and after January 1, 1974."

[84] See attachments "California State Assembly and Senate Final History – 1973-74 Session" and "California State Assembly and Senate Final History – 1975-76 Session." These documents published by the Legislative Counsel provide an index of each section of the California Constitution, codes and uncodified laws affected by measures introduced during legislative sessions. Both attachments indicate no repeal of former Education Code sections 1031, 1034,

shown by the language of former Education Code section 1031, K-12 school districts and community college districts were required to establish and maintain records as required by law since 1963. "Law" is inclusive of regulations adopted by the State Board of Education and the Board of Governors, as administrative regulations "have the dignity of statutes."[85] In addition, prior to 1980 K-12 school districts were required to include a pupil's health record in pupil records. As a result, the activities mandated by Education Code sections 49062 and 76220 are not new as compared to the pre-existing scheme, and therefore do not constitute new programs or higher levels of service. Staff notes that the claimants have not pled California Code of Regulations, title 5, section 432, and as a result, staff makes no findings regarding California Code of Regulations, title 5, section 432 as amended in 1977.

Staff finds that Education Code sections 49062 and 76220 do not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

Fee for Copies of Pupil or Student Records (Ed. Code, §§ 49065 and 76223):

Do Education Code sections 49065 and 76223 mandate any activities?

The claimants assert that sections 49065 and 76223 require K-12 school districts and community college districts to furnish up to two transcripts of former pupils/students' records or up to two verifications of various records of former pupils/students, and to search and retrieve pupil/student records when transcripts or verifications are requested.[86]

The plain language of sections 49065 or 76223, however, does not require K-12 school districts or community college districts to engage in any activities, including those identified by the claimants. Rather, sections 49065 and 76223 provide K-12 school districts and community college districts the authority to charge for copies of any pupil/student record and places limits on this authority. Specifically, section 49065 provides:

> Any school district *may* make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils. No charge may be made to search for or to retrieve any pupil records. (Emphasis added.)

Thus, section 49065 provides K-12 school districts with fee authority by providing that a "school district may make a reasonable charge … ." The remaining portion of section 49065 acts to limit this fee authority by providing, "however, no charge shall be made for … ." The language of section 76223 substantively mirrors the language of Education Code section 49065 as made applicable to community college districts, except that the limitations to the fee authority for copies of student records applies to "students" rather than "former pupils." "Pupil record" as used in section 49065 is defined by Education Code section 49061 as:

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and 25422.5 between 1973-1975. Pursuant to Evidence Code section 664 "It is presumed that official duty has been regularly performed."

[85] *Young v. Gannon* (2002) 97 Cal.App.4th 209, 221.

[86] Test claim 02-TC-34, p. 27.

> [A]ny item of information directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

Education Code section 49061 limits the scope of "pupil record" by providing that:

> "Pupil record" does not include informal notes related to a pupil compiled by a school officer or employee which remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. ... .
>
> "Directory information" means one or more of the following items: pupil's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the pupil.

"Student record" as used in section 76223 is defined by Education Code section 76210. Section 76210 defines "student record" in a similar manner as "pupil record," however, section 76210 limits the scope of "student record" by providing that:

> "Student record" does not include (A) confidential letters and statements of recommendations maintained by a community college on or before January 1, 1975, if these letters or statements are not used for purposes other than those for which they were specifically intended, (B) information provided by a student's parents relating to applications for financial aid or scholarships, or (C) information related to a student compiled by a community college officer or employee that remains in the sole possession of the maker and is not accessible or revealed to any other person except a substitute. For purposes of this paragraph, "substitute" means a person who performs, on a temporary basis, the duties of the individual who made the notes and does not refer to a person who permanently succeeds the maker of the notes in his or her position.
>
> "Student record" also does not include information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity, and that is created, maintained, or used only in connection with the provision of treatment to the student and is not available to anyone other than persons providing that treatment. However, that record may be personally reviewed by a physician or other appropriate professional of the student's choice.
>
> "Student record" does not include information maintained by a community college law enforcement unit, if the personnel of the unit do not have access to student records pursuant to Section 76243, the information maintained by the unit is kept apart from information maintained pursuant to subdivision (a), the information is maintained solely for law enforcement purposes, and the information is not made available to persons other than law enforcement officials of the same jurisdiction. "Student record" does not include information maintained in the normal course of business pertaining to persons who are

employed by a community college, if the information relates exclusively to the person in that person's capacity as an employee and is not available for use for any other purpose.

"Directory information" means one or more of the following items: a student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.

As a result, Education Code section 49065 authorizes K-12 school districts to charge a fee not to exceed the actual cost of furnishing copies of *any* pupil record as defined by section 49061. This fee authority does not extend to the first two transcripts of *former* pupils' records or the first two verifications of various records of *former* pupils, or the cost to search for or retrieve the pupil records. Similarly, Education Code section 76223 provides fee authority to community college districts for the actual cost of furnishing copies of *any* student records as defined by section 76210. The fee authority provided by section 76223 does not extend to the first two transcripts of *students*' records or the first two verifications of various records of *students*, or the cost to search for or retrieve the student records. Unlike section 49065, the fee authority provided by section 76223 does not extend to the first two transcripts or various records of both *current* and *former* students.

Thus, pursuant to the plain language of the test claim statutes, staff finds that Education Code sections 49065 and 76223 do not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

Evaluation of K-12 School District Pupil Achievement (Ed. Code, §§ 49067):

Does Education Code section 49067 mandate any activities?

Education Code section 49067 addresses the evaluation of K-12 school districts' pupils' achievement. Section 49067 provides in relevant part:

(a) The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grace period.

(b) The governing board of any school district *may* adopt regulations authorizing a teacher to assign a failing grade to any pupil whose absences from the teacher's class that are not excused [citation] equal or exceed the maximum number which shall be specified by the board. [¶] ... [¶]. (Emphasis added.)

The remaining portion of subdivision (b) sets forth required content of a K-12 school district's regulations if the governing board of that district *decides* to adopt regulations allowing teachers to assign failing grades due to excessive unexcused absences. Subdivision (c) of section 49067 provides that section 49067 applies to the parent or guardian of any pupil regardless of the pupil's age.

Staff finds that Education Code section 49067 imposes the following state-mandated activity on K-12 school districts:

> Prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. (Ed. Code, § 49067, subd. (a).)

Does the activity mandated by Education Code section 49067 constitute a new program or higher level of service for K-12 school districts?

The claimants have pled Education Code section 49067, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 10938, and renumbered to current Education Code section 49067 by Statutes 1976, chapter 1010. As pled by the claimants, section 49067 imposes the following state-mandated activity:

> Prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. (Ed. Code, § 49067, subd. (a).)

However, in 1973 former Education Code section 10759 provided in relevant part:

> The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent or guardian of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course.[87]

Former Education Code section 10759 was repealed and renumbered to former Education Code section 10938 in 1975 by Statutes 1975, chapter 816. Thus, as shown by the language of former Education Code section 10759, K-12 school districts were already required to prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course since 1973. Thus, the state-mandated activity imposed by Education Code section 49067, subdivision (a) does not constitute a new program or higher level of service. Staff finds that Education Code section 49067 does not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

Transfer of Education Records Between Schools (Ed. Code, §§ 49068 and 76225):

Do Education Code sections 49068 and 76225 mandate any activities?

As noted above in the federal mandates discussion, Education Code sections 49068 and 76225 address the transfer of a pupil's permanent record and a student's appropriate records between schools and institutions of higher education. Because some of the activities required by

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[87] Former Education Code section 10759 (Stats. 1973, ch. 381), repealed and renumbered to Former Education Code section 10938 by Statutes 1975, chapter 816, repealed and renumbered to Education Code section 49067 by Statutes 1976, chapter 1010.

Education Code sections 49068 and 76225 have already been determined to constitute federal mandates, the following discussion will focus on the portions of Education Code sections 49068 and 76225 that exceed federal law. Education Code section 49068 provides in relevant part:

> Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. ... .

The language of section 76225 substantively mirrors the language of Education Code section 49068 as made applicable to community college districts, except that section 76225 provides that "appropriate records" shall be transferred upon a request from the student.

The plain language of Education Code sections 49068 and 76225 mandate K-12 school districts and community colleges to perform the following activities:

1. Transfer a pupil's permanent record, or a copy of the permanent record, to the K-12 school district or private school where the pupil intends to enroll upon the request of the K-12 school district or private school where a pupil intends to transfer. (Ed. Code, § 49068.)
2. Transfer appropriate records or a copy thereof to a community college or public or private institution of postsecondary education within California that a student intends to transfer to upon request from the student. (Ed. Code, § 76225.)

Do the activities mandated by Education Code sections 49068 and 76225 constitute new programs or higher levels of service?

The claimants have pled Education Code section 49068, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 10939, and renumbered to current Education Code section 49068 by Statutes 1976, chapter 1010. Similarly, the claimants have pled Education Code section 76224, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 25430.7, and renumbered to current Education Code section 76225 by Statutes 1976, chapter 1010. As pled by the claimants, section 49068 imposes the following state-mandated activity:

> Transfer a pupil's permanent record, or a copy of the permanent record, to the K-12 school district or private school where the pupil intends to enroll upon the request of the K-12 school district or private school where a pupil intends to transfer. (Ed. Code, § 49068.)

In addition as pled by the claimants, section 76225 imposes the following state-mandated activity:

> Transfer appropriate records or a copy thereof to a community college or public or private institution of postsecondary education within California that a student intends to transfer to upon request from the student. (Ed. Code, § 76225.)

However, in 1959 former Education Code section 10752 provided in relevant part:

> Whenever a pupil transfers from one school district to another within this State, the cumulative record of the pupil, which may be available to the pupil's parent

> for inspection during consultation with a certificated employee of the district, or a copy of the record, shall be transferred to the district to which the pupil transfers; provided, a request for such cumulative record is received from the district to which the transfer is made.[88]

The requirements of former Education Code section 10752 was made applicable to community college districts by former Education Code section 25422.5 which provided:

> Except as otherwise provided in this code, the powers and duties of community colleges are such as are assigned to high school boards.[89]

Former Education Code section 10752 was repealed and renumbered to former Education Code section 10939 in 1975 by Statutes 1975, chapter 816. In addition, as noted above, former Education Code section 25422.5 was in existence in 1974[90] and was not repealed until the renumbering of the Education Code by Statutes 1976, chapter 1010.[91] As shown by the above language, prior to 1975, K-12 school districts and community college districts were required to transfer a pupil/student's "cumulative record." Currently, K-12 school districts are required to transfer a pupil's "permanent record," and community colleges districts are required to transfer "appropriate records." The scope of the term "cumulative record" was undefined in the pre-1975 governing statutes. Similarly, the scope of the terms "permanent record," and "appropriate records" are undefined in the governing statutes. As a result, an ambiguity arises to what K-12 school districts and community college districts were required to transfer pre-1975 and what K-12 school districts and community college districts are required to transfer now. Thus, it is necessary to determine what "permanent record," "appropriate records," and "cumulative record" mean.

In order to determine the meaning of "permanent record" and "appropriate records" it is necessary to read these terms in the context of the whole statutory scheme and not as individual parts or words standing alone.[92]

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[88] Former Education Code section 10752 (Statutes 1959, ch. 1989), repealed and renumbered to former Education Code section 10939 by Statutes 1975, chapter 816, repealed and renumbered to Education Code section 49068 by Statutes 1976, chapter 1010.

[89] Statutes 1970, chapter 102.

[90] See attachments "Education Code 1973 – Sections 1-12851" and "Education Code 1973 – Sections 20101-45065." The "Foreword" of these attachments note that these editions of the Education Code show "all sections as they are in effect on and after January 1, 1974."

[91] See attachments "California State Assembly and Senate Final History – 1973-74 Session" and "California State Assembly and Senate Final History – 1975-76 Session." These documents published by the Legislative Counsel provide an index of each section of the California Constitution, codes and uncodified laws affected by measures introduced during legislative sessions. Both attachments indicate no repeal of former Education Code sections 1031, 1034, and 25422.5 between 1973-1975. Pursuant to Evidence Code section 664 "It is presumed that official duty has been regularly performed."

[92] *Fontana Unified School Dist., supra*, 45 Cal.3d at p. 218.

As quoted above, Education Code sections 49062 and 76220 provide that pupil/student records are to be established, maintained, and destroyed according to regulations adopted by the State Board of Education and the Board of Governors. As a result, the Legislature has placed the authority to define what pupil and student records are to be established in the hands of the Board of Education and the Board of Governors.

The regulations of the Board of Education define "mandatory permanent pupil records" as "those records which are maintained in perpetuity and which schools have been directed to compile by California statute, regulation, or authorized administrative directive."[93] In addition to defining "mandatory permanent pupil records," the Board of Education sets forth definitions for "mandatory interim pupil records," and "permitted pupil records."[94] The Board of Education's regulations then delineates what information each record shall include.[95] Therefore, "permanent record" is a subset of a larger group of records.

The regulations of the Board of Governors do not define "appropriate records." In order to define "appropriate records" it is necessary to view the term "appropriate records" in the context of the whole of Education Code section 76225. "Appropriate records" is used in section 76225 within the context of a student transferring from one community college or public or private institution of postsecondary education to another within the state. It follows that "appropriate records" is limited to those appropriate for the transfer of a student.

As noted above, the pre-1975 governing statutes did not define the scope of "cumulative record" as used in former Education Code section 10752. To determine the scope of "cumulative record" it is necessary to look at the plain language of the term. The American Heritage Dictionary defines "cumulative" as, "Acquired by or resulting from accumulation."[96] Thus, the plain language of former Education Code section 10752 required K-12 school districts and community college districts to transfer the accumulated records of a pupil/student. Therefore, the scope of what former Education Code section 10752 required to be transferred was not limited to a pupil/student's "permanent record" as defined post 1975, nor was it limited to records appropriate for the transfer of a student. Rather, all of the pupil/student records accumulated by a K-12 school district or community college district regarding a particular pupil/student were required to be transferred to the pupil/student's new school or college. As a result, the pupil/student records required to be transferred by former Education Code section 10752 included the "permanent record" and "appropriate records."

Pursuant to the above discussion, former Education Code section 10752 required K-12 school districts and community college districts to transfer a pupil's permanent record and a student's "appropriate records," or a copy of the permanent/appropriate record, to the new school where the pupil/student intends to enroll upon the request of the new school or the student. Thus, the activities required by Education Code sections 49068 and 76225 do not constitute a new program or higher level of service. Staff finds that Education Code sections 49068 and 76225 do not

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[93] California Code of Regulations, title 5, section 430, Register 77, No. 39 (Sept. 23, 1977).

[94] *Ibid.*

[95] California Code of Regulations, title 5, section 432, subdivision (b)(2)(B), Register 77, No. 39 (Sept. 23, 1977).

[96] American Heritage Dictionary (new college ed. 1979) p. 322.

mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

Foster Family Agency Access to Education Records (Ed. Code, § 49069.3):

Does Education Code section 49069.3 mandate any activities?

Education Code section 49069.3 addresses a foster family agency's access to records of grades, transcripts, and individualized education plans of currently enrolled or former pupils. Specifically, section 49069.3 provides:

> Foster family agencies with jurisdiction over currently enrolled or former pupils may access records of grades and transcripts, and any individualized education plans ... maintained by school districts or private schools of those pupils.

Pursuant to the plain language of section 49069.3, foster family agencies with jurisdiction over a pupil are authorized to access the pupil's records of grades and transcripts and any individualized education plans maintained by K-12 school districts. Although the plain language does not expressly state that a K-12 school district must provide a foster family agency with access to a pupil's record of grades and transcripts, and any individualized education plans, section 49069.3 must be read in the context of the whole statutory scheme and not as individual parts or words standing alone.[97] In addition, section 49069.3 "must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity."[98]

Section 49069.3 was adopted under article 4 of Chapter 6.5 of part 27 of division 4 of title 2 of the Education Code addressing the rights of parents in the context of pupil records. Education Code section 49069, immediately proceeding section 49069.3, provides that parents of currently enrolled and former pupils have an absolute right to access any and all pupil records related to their children and requires K-12 school districts to adopt procedures to provide access to parents. "Parents" is defined by Education Code section 49061 as a natural parent, an adopted parent, or legal guardian. Therefore, parents or foster parents who have been made a guardian of a pupil had access to the records of a pupil, but foster family agencies did not.

Immediately following section 49069.3, Education Code section 49069.5 provides in relevant part:

> The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.[99]

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[97] *Fontana Unified School Dist., supra*, 45 Cal.3d at p. 218.

[98] *American Buildings Co. v. Bay Commercial Construction, Inc.* (2002) 99 Cal. App. 4th 1193.

[99] Education Code section 49069.5, subdivision (a) (Stats. 1998, ch. 311).

In this context, Education Code section 49069.3 was adopted to lessen the negative effect of a pupil's mobility in foster care on the pupil's educational experience. The legislative history of section 49069.3 indicates this intent, acknowledging that:

> ... private foster agencies find it difficult to track the records of children in their care since they do not have direct access except through the government social worker assigned to the pupil's case.
>
> Foster children are placed in numerous homes throughout their stay in foster care. Each time they are moved, the new foster parent must access the pupil's school records and attempt to reconstruct the child's educational background. If the private foster agency had permission to access these records they would be able to take some of the burden off of the new parent, and expedite their review of the child's school records.[100]

In light of the statutory scheme surrounding Education Code section 49069.3 and the legislative intent behind its adoption, a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers is that K-12 school districts are required to provide a foster family agency access to the records of grades and transcripts, and any individualized education plans maintained by the K-12 school district regarding a student under the jurisdiction of the foster family agency. An interpretation to the contrary would render a foster family agency's right to access meaningless.

Staff finds that Education Code section 49069.3 mandates K-12 school districts to perform the following activity:

> Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

Does the activity mandated by Education Code section 49069.3 constitute a new program or higher level of service?

In order for state-mandated activities to constitute new programs or higher levels of service the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.[101] In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.[102] To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.[103]

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[100] Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Assembly Bill 2453 (1999-2000 Reg. Sess.) as amended April 6, 2000.

[101] *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

[102] *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

[103] *Ibid.*

In *Long Beach Unified School Dist.*, the court held, "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function."[104] Here, the activity mandated by Education Code section 49069.3 constitutes a program under article XIII B of the California Constitution by carrying out the governmental function of education. The requirement of Education Code section 49069.3 aids a pupil's educational goals by minimizing the disruption to a pupil's education due to transferring between schools. Thus, the activity mandated by Education Code section 49069.3 constitutes a "program."

In addition, prior to the enactment of Education Code section 49069.3 in 2000,[105] K-12 school districts were not required to provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. Staff finds that Education Code section 49069.3 mandates the following new program or higher level of service on K-12 school districts:

> Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

Transfer of Foster Children's Records Between Local Educational Agencies (Ed. Code, § 49069.5):

Does Education Code section 49069.5 mandate any activities?

Education Code section 49069.5 addresses the transfer of foster children's educational and background records from one local educational agency to another. Education Code section 49069.5 was added by Statutes 1998, chapter 311, and subsequently amended by Statutes 2003, chapter 682, and Statutes 2005, chapter 639. As added by Statutes 1998, chapter 311, Education Code section 49069.5 provided:

> (a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.
>
> (b) Upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency, a local education agency with which a pupil in foster care has most recently been enrolled that has been informed of the next educational placement of the pupil shall cooperate with the county social service or probation department to ensure that the pupil's education record is transferred to the receiving local education agency in a timely manner.
>
> (c) Whenever a local educational agency with which a pupil in foster care has most recently been enrolled is informed of the next educational placement of the pupil, that local educational agency shall cooperate with the county social service or probation department to ensure that educational background information for that pupil's health and educational record, as described in Section 16010 of the

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[104] *Long Beach Unified School Dist., supra*, 225 Cal.App.3d at p. 172.

[105] Statutes 2000, chapter 67 (Assem. Bill No. 2453).

Welfare and Institutions Code, is transferred to the receiving local educational agency in a timely manner.

(d) Information provided pursuant to subdivision (c) of this section shall include, but not be limited to the following:

(1) The location of the pupil's records.

(2) The last school and teacher of the pupil.

(3) The pupil's current grade level.

(4) Any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

(e) Notice shall be made within five working days and information transferred within five additional working days of receipt of information regarding the new educational placement of the pupil in foster care.

As added in 1998, section 49069.5, subdivision (b) mandates a K-12 school district with which a pupil in foster care has most recently been enrolled to cooperate with the county social service or probation department to ensure that the pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency.

Subdivision (c) of section 49069.5 mandates K-12 school districts to cooperate with the county social service or probation department to ensure that educational background information for that pupil's health and educational record is transferred to the receiving local educational agency in a timely manner. Subdivision (d) of section 49069.5, defines what educational background information is to include.

Subdivision (e) of section 49069.5 provides that "notice shall be made" and "information transferred," however, an ambiguity arises as the plain language of the subdivision is silent as to who is responsible for these activities. Due to this ambiguity, it is necessary to determine whether K-12 school districts are required to provide notice and/or transfer information pursuant to subdivision (e). In order to make this determination, subdivision (e) must be interpreted in light of all of the provisions of section 49069.5. Subdivision (a) and (b) both provide that a K-12 school district must cooperate when it "has been *informed* of the next educational placement of the pupil." In light of this language it is evident that the "notice" referenced in subdivision (e) is notice *to* K-12 school districts, and the requirement that "notice shall be made" is not directed at K-12 school districts. Instead the requirement that "notice shall be made" is directed toward county social service or probation departments, regional centers for the developmentally disabled, or other placing agencies. In regard to the transferring of information, from the plain language of subdivisions (b) and (c), K-12 school districts and the county social service or probation department are to cooperate to ensure the transfer of a pupil's information. As a result, pursuant to subdivision (e) of section 49069.5, K-12 school districts are required to transfer a pupil's information to a pupil's new local educational agency within five working days of notice that the pupil in foster care is transferring.

In 2003, section 49069.5 was substantially amended by Statutes 2003, chapter 862. The claimants have not pled Education Code section 49069.5, as amended by Statutes 2003,

chapter 862, or any subsequent amendments thereafter. Section 49069.5, as amended in 2003, provides in relevant part:

> (b) The proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency and the county placing agency.
>
> (c) As soon as the county placing agency becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency shall contact the appropriate person at the local educational agency of the pupil. The county placing agency shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out.
>
> (d) Upon receiving a transfer request from a county placing agency, the local educational agency shall, within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement.
>
> (e) As part of the transfer process described under subdivisions (c) and (d), the local educational agency shall compile the complete educational record of the pupil including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the pupil's plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.).
>
> (f) The local educational agency shall assign the duties listed in this section to a person competent to handle the transfer procedure and aware of the specific educational record keeping needs of homeless, foster, and other transient children who transfer between schools.
>
> (g) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a decision to change the placement of a pupil made by a court or placing agency, the grades and credits of the pupil will be calculated as of the date the pupil left school, and no lowering of grades will occur as a result of the absence of the pupil under these circumstances.
>
> (h) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a verified court appearance or related court ordered activity, no lowering of his or her grades will occur as a result of the absence of the pupil under these circumstances.

As shown by the language of section 49069.5, as amended in 2003, the only activity remaining from section 49069.5, as added by Statutes 1998, chapter 311, is found in subdivision (d) of section 49069.5, as amended in 2003. Subdivision (d) of the 2003 amendments provides, like subdivision (e) of the 1998 version, that K-12 school districts must "deliver the educational information and records of the pupil to the next educational placement" upon receiving a transfer request from a county placing agency. However, the provisions of section 49069.5, as added by 1998, chapter 311, that required K-12 school districts to "cooperate with county social service or probation departments" were removed in the 2003 amendment. The operative date of the 2003

amendments is January 1, 2004. After December 31, 2003, the activities required by section 49069.5, as added by Statutes 1998, chapter 311, are no longer required except for the following activity:

> Transfer a pupil's educational and health record within five working days of receipt of information regarding the new educational placement of a pupil in foster care. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

In summary, staff finds that Education Code section 49069.5, as added by Statutes 1998, chapter 311, mandates K-12 school districts to perform the following activities:

1. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)
2. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) the location of the pupil's records, (2) the last school and teacher of the pupil, (3) the pupil's current grade level, and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)
3. Transfer a pupil's educational and health record within five working days of receipt of information regarding the new educational placement of a pupil in foster care. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

As noted above, the claimants have not pled Education Code section 49069.5, as amended by Statutes 2003, chapter 862, or any subsequent amendments, and as a result, staff makes no findings regarding Education Code section 49069.5, as amended by Statutes 2003, chapter 862, or any subsequent amendments.

Do the mandated activities of Education Code section 49069.5 constitute new programs or higher levels of service?

Education Code section 49069.5 constitutes a "program" by carrying out the governmental function of education. Like Education Code section 49069.3, Education Code section 49069.5 aids a pupil's educational goals by minimizing the disruption to pupils due to transferring between schools. In addition, prior to the enactment of Education Code section 49069.5 in 1998,[106] K-12 school districts were not required to engage in the activities mandated by

[106] Statutes 1998, chapter 311.

Education Code section 49069.5. Staff finds that Education Code section 49069.5 mandates the following new programs or higher levels of service on K-12 school districts:

1. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

2. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) the location of the pupil's records, (2) the last school and teacher of the pupil, (3) the pupil's current grade level, and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Transfer a pupil's educational and health record within five working days of receipt of information regarding the new educational placement of a pupil in foster care. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

Release of Pupil Information to Peace Officers (Ed. Code, § 49076.5):

Does Education Code section 49076.5 mandate any activities?

Education Code section 49076.5 addresses the release of a pupil's information to peace officers. Specifically, section 49076.5 provides:

> (a) Notwithstanding Section 49076, each school district shall release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information.
>
> (b) In order to protect the privacy interests of the pupil, a request to a school district for pupil record information pursuant to this section shall meet the following requirements:
>
> (1) For the purposes of this section "proper police purpose" means that probable cause exists that the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school and that the agency has begun an active investigation.
>
> (2) Only designated peace officers and federal criminal investigators and federal law enforcement officers, as defined in Section 830.1 of the Penal Code, whose names have been submitted to the school district in writing by a law enforcement

agency, may request and receive the information specified in subdivision (a). Each law enforcement agency shall ensure that each school district has at all times a current list of the names of designated peace officers authorized to request pupil record information.

(3) This section does not authorize designated peace officers to obtain any pupil record information other than that authorized by this section.

(4) The law enforcement agency requesting the information shall ensure that at no time shall any information obtained pursuant to this section be disclosed or used for any purpose other than to assist in the investigation of suspected criminal conduct of kidnapping. A violation of this paragraph shall be punishable as a misdemeanor.

(5) The designated peace officer requesting information authorized for release by this section shall make a record on a form created and maintained by the law enforcement agency which shall include the name of the pupil about whom the inquiry was made, the consent of a parent having legal custody of the pupil or a legal guardian, the name of the officer making the inquiry, the date of the inquiry, the name of the school district, the school district employee to whom the request was made, and the information that was requested.

(6) Whenever the designated peace officer requesting information authorized for release by this section does so in person, by telephone, or by some means other than in writing, the officer shall provide the school district with a letter confirming the request for pupil record information prior to any release of information.

(7) No school district, or official or employee thereof, shall be subject to criminal or civil liability for the release of pupil record information in good faith as authorized by this section.

The plain language of Education Code section 49076.5 requires K-12 school districts to release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within California or any other state or to a private school in California to a designated peace officer upon the officer's request, when a proper police purpose exists for the use of that information.

The claimants allege activities resulting from subdivision (b) of section 49076.5;[107] however, as shown by the above quoted language, subdivision (b) defines "proper police purpose" and sets forth requirements of police officers seeking pupil records. Thus, subdivision (b) does not require any activities on K-12 school districts.

Staff finds that Education Code section 49076.5, subdivision (a), mandates K-12 school districts to perform the following activity:

> Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace

[107] Test claim 02-TC-34, p. 29.

officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Does the mandated activity of Education Code section 49076.5 constitute a new program or higher level of service?

As noted by the court in *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, police and fire protection are two of the most essential and basic functions of local government.[108] Education Code section 49076.5 was adopted for the purpose of giving peace officers the authority to access the school records of children suspected of having been kidnapped as a method to help find these children.[109] For this reason, Education Code section 49076.5 carries out a governmental function of police protection of children. In addition, prior to 1993,[110] K-12 school districts were not required to release information specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district to designated peace officers. Therefore, staff finds that Education Code section 49076.5 mandates the following new program or higher level of service on K-12 school districts:

> Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Provision of Student Information in Compliance with a Court Order or Subpoena (Ed. Code, §§ 49077 and 76244):

Do Education Code sections 49077 and 76244 mandate any activities?

As noted during the federal mandates discussion above, Education Code sections 49077 and 76244 address the provision of pupil/student information in compliance with a court order. Because part of Education Code sections 49077 and 76244 have been determined to constitute federal mandates and court mandates, the following discussion will focus on the parts that exceed federal law and the court mandate. Specifically, section 49077 provides in relevant part:

> Information concerning a student shall be furnished in compliance with a … lawfully issued subpoena. … .

The language of section 76244 substantively mirrors the language of Education Code section 49077 as made applicable to community college districts. The plain language of Education Code sections 49077 and 76244 mandate K-12 school districts and community college districts to perform the following activities:

1. Furnish information concerning a pupil in compliance with a lawfully issued subpoena issued by a non-court entity. (Ed. Code, §§ 49077.)

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[108] *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d. at p. 537.

[109] Office of Senate Floor Analyses, Analysis of Senate Bill Number 1539 (1993-1994 Reg. Sess.) as amended August 30, 1993.

[110] Statutes 1993, chapter 561.

2. Furnish information concerning a student in compliance with a lawfully issued subpoena issued by a non-court entity. (Ed. Code, §§ 76244.)

The claimants note that the test claim does not allege furnishing information in compliance with a court order or lawfully issued subpoena,[111] however, as shown by the plain language of sections 49077 and 76244, K-12 school districts are required to perform the above listed activities.

Do the mandated activities of Education Code sections 49077 and 76244 constitute new programs or higher levels of service?

The claimants have pled Education Code section 49077, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 10948 , and renumbered to current Education Code section 49077 by Statutes 1976, chapter 1010. Similarly, the claimants have pled Education Code section 76244, as added by Statutes 1975, chapter 816, formerly numbered as Education Code section 25430.16, and renumbered to current Education Code section 76244 by Statutes 1976, chapter 1010. As pled by the claimants, sections 49077 and 76244 impose the following state-mandated activity:

> Furnish information concerning a pupil/student in compliance with a lawfully issued subpoena issued by a non-court entity.

However, as set forth in the Code of Civil Procedure sections 1985-1997,[112] K-12 school districts and community college districts were required to furnish information concerning a student in compliance with a lawfully issued subpoena, whether as a witness or via the production of documents, prior to the adoption of the Education Code sections 49077 and 76244. Derived from Statutes 1851, chapter 5, section 402, the Code of Civil Procedure section 1985 defines "subpoena" as a writ or order requiring a person's attendance to testify as a witness or to bring any books, documents, or other things under the witness's control. Also derived from Statutes 1851, chapter 5, sections 409 – 411, the Code of Civil Procedure sections 1985 – 1997, a failure to furnish information in compliance with a lawfully issued subpoena subjects the person in noncompliance to punishment for contempt, forfeiture of five hundred dollars and damages in a civil action, and/or arrest.[113] Thus, K-12 school districts and community college districts were required to furnish information concerning students in compliance with a lawfully issued subpoena prior to 1975 as pled by the claimants. As a result, the activities required by Education Code sections 49077 and 76244 do not constitute new programs or higher levels of service. Therefore staff finds that Education Code sections 49077 and 76244 do not mandate new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution.

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[111] Claimants' response to Chancellor's Office Comments on 02-TC-34, *supra*, p. 14.

[112] See Government Code section 11180 – 11191 for administrative subpoenas (added by Stats. 1945, ch.111).

[113] Code of Civil Procedure sections 1991 – 1993, derived from Statutes 1851, chapter 5, section 409-411. See Government Code sections 11187 – 11189, providing that enforcement of administrative agency subpoena can be enforced through the courts in the same manner provided by the Code of Civil Procedure. Government Code sections added by Statutes 1945, chapter 111.

Means of Complying with a Lawfully Issued Subpoena or Court Order (Ed. Code, §§ 49078 and 76245):

Do Education Code sections 49078 and 76245 mandate any activities?

Education Code sections 49078 and 76245 address the means of complying with a lawfully issued subpoena or a court order upon a public school/community college employee solely for the purpose of causing him or her to produce a school record pertaining to any pupil/student. Specifically, section 49078 provides:

> The service of a lawfully issued subpoena or a court order upon a public school employee solely for the purpose of causing him or her to produce a school record pertaining to any pupil may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency, or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the school or school office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

Section 76245 substantively mirrors Education Code section 49078 as made applicable to community colleges and community college districts.

The claimants assert that sections 49078 and 762445 require K-12 school/community college employees to personally appear as a witness upon service of a lawfully issued subpoena or court order seeking the production of records of a pupil/student, or to submit a copy of the record in lieu of a personal appearance.[114] In response, the Chancellor's Office notes that community college districts are subject to the law of general application set forth in Code of Civil Procedure section 1985 et seq., requiring compliance with subpoenas.[115] The claimants respond that the Chancellor's Office errs in its analysis, because a determination of whether a test claim statute contains a law of general application must be directed to the test claim statute.[116] However, a discussion regarding whether the alleged requirements of section 76245 constitutes a law of general application is unnecessary, because it first must be determined whether the alleged required activities are actually required by the language of the test claim statute.

The plain language of sections 49078 and 76245 do not require any activity of K-12 school districts/community college districts. Rather, the plain language of sections 49078 and 76245 provide an alternative means of complying with a lawfully issued subpoena or court order. Specifically, sections 49078 and 76245 authorize K-12 school/community college employees to submit a copy of a pupil/student's records to a court, agency, or person designated in a subpoena in lieu of personally appearing in court in order to comply with the subpoena (or court order). Therefore staff finds that Education Code sections 49078 and 76245 do not mandate new

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[114] Test Claim 02-TC-34, p. 30-32.

[115] Chancellor's Office Comments on 02-TC-34, *supra*, p. 6.

[116] Claimants' response to Chancellor's Office Comments on 02-TC-34, *supra*, p. 15.

programs or higher levels of service on K-12 school districts or community college districts subject to article XIII B, section 6 of the California Constitution.

Notification of Victims of Sexual Assault of Disciplinary Actions (Ed. Code, § 76234):

Does Education Code section 76234 mandate any activities?

Education Code section 76234 addresses the notification of an alleged victim of sexual assault or physical abuse of any disciplinary action by the community college taken against any student for the alleged sexual assault or physical abuse and the results of any appeal. Specifically, section 76234 provides:

> Whenever there is included in any student record information concerning any disciplinary action taken by a community college in connection with any alleged sexual assault or physical abuse, including rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault, or any conduct that threatens the health and safety of the alleged victim, the alleged victim of that sexual assault or physical abuse shall be informed within three days of the results of any disciplinary action by the community college and the results of any appeal. [¶] ... [¶].

The plain language of section 76234 mandates community colleges to perform the following activity:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

Does the activity mandated by Education Code section 76234 constitute a new program or higher level of service?

Education Code section 76234 constitutes a "program" within the meaning of article XIII B section 6 by carrying out the governmental function of protecting a student's educational records and limiting access to these records to specified instances. In addition, prior to the enactment of Education Code section 76234 in 1989,[117] community colleges were not required to engage in the activities mandated by Education Code section 76234. Staff finds that Education Code section 76234 mandates the following new program or higher level of service on community colleges:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

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[117] Statutes 1989, chapter 593.

Adoption of Rules and Regulations for the Implementation of California Law Regarding Pupil Records (Ed. Code, § 76246):

Does Education Code section 76246 mandate any activities?

Education Code section 76246 addresses the adoption of rules and regulations for the orderly implementation of Education Code sections 76200 – 76246. Specifically, section 76246 provides:

> The Board of Governors of the California Community Colleges shall adopt appropriate rules and regulations to insure the orderly implementation of this chapter. A community college district governing board may adopt rules and regulations which are not inconsistent with this chapter or with those adopted by the board of governors in order to ensure the orderly implementation of this chapter.

The claimants allege that section 76246 requires community college districts to comply with appropriate rules and regulations adopted by the Board of Governors of the California Community Colleges to insure the orderly implementation of this chapter. However, the plain language of section 76246 makes no mention of "complying with appropriate rules and regulations adopted by the board of Governors."[118] Rather, the plain language of section 76246 requires the Board of Governors to adopt rules and regulations, and authorizes the governing boards of community college districts to adopt rules or regulations. As a result, community college districts are not required to engage in any activities pursuant to the plain language of section 76246.

In response to the Chancellor's Office comments that argue that Education Code section 76246 does not require community college districts to engage in any activity, the claimants argue, "Certainly the [Chancellor's Office] cannot mean that community college districts need not comply with appropriate rules and regulations adopted by its Board of Governors."[119] However, a finding that Education Code *section 76246* does not require community college districts to engage in any activities does not lead to a conclusion that community college districts need not comply with the rules and regulations of the Board of Governors. Rather, the finding *only* provides that the plain language of Education Code *section 76246* does not require this activity.

Thus, staff finds that Education Code section 76246 does not mandate a new program or higher level of service on K-12 school districts or community college districts subject to article XIII B, section 6 of the California Constitution.

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[118] Test Claim 02-TC-34, p. 32.

[119] Claimants' response to Chancellor's Office Comments on 02-TC-34, *supra*, p. 16.

Summary of new programs or higher levels of service on K-12 school districts and community college districts subject to article XIII B, section 6 of the California Constitution:

Pursuant to the above discussion, staff finds that Education Code sections 49069.3, 49069.5, and 49067.5 mandate the following new programs or higher levels of service on K-12 school districts subject to article XIII B, section 6 of the California Constitution:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) the location of the pupil's records; (2) the last school and teacher of the pupil; (3) the pupil's current grade level; and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

4. Transfer a pupil's educational and health record within five working days of receipt of information regarding the new educational placement of a pupil in foster care. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

In addition, pursuant to the above discussion staff finds that Education Code sections 76234 mandates the following new program or higher level of service on community college districts subject to article XIII B, section 6 of the California Constitution:

Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

Issue 3: Do the state-mandated new programs or higher levels of service impose costs mandated by the state on K-12 school districts and community college districts within the meaning of article XIII B, section 6, and Government Code section 17514?

In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.[120] Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The claimants estimated that they "will incur approximately $1,000, or more, annually, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002"[121] to implement all duties alleged by the claimants to be mandated by the state.

Thus, staff finds that the record supports the finding of costs mandated by the state and that none of the exceptions in Government Code section 17556 apply to deny these activities. As a result, staff finds that Education Code sections 49069.3, 49069.5, and 49076.5 impose costs mandated by the state on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) the location of the pupil's records; (2) the last school and teacher of the pupil; (3) the pupil's current grade level; and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5,

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[120] *Lucia Mar*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[121] Test Claim, Exhibit 1, Declarations of Bill Hendrick and Herman C. Lee.

subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

4. Transfer a pupil's educational and health record within five working days of receipt of information regarding the new educational placement of a pupil in foster care. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Similarly, staff finds that Education Code section 76234 imposes costs mandated by the state on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activity:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

Staff notes that Education Code sections 49065 and 76220 provide K-12 school districts and community college districts with fee authority to cover "the actual cost of furnishing copies of *any* pupil/student record" as defined by Education Code sections 49061 and 76210. This fee authority does not extend to furnishing the first two transcripts of records of former pupils or current/former students, or the first two verifications of various records of former pupils or current/former students, or the cost of searching for or retrieving any pupil or student record. Subject to the limitations discussed, this fee authority is applicable to all of the state-mandated activities identified above. Therefore, any revenue resulting from the fee authority set forth in Education Code sections 49065 and 76220 is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil records and student records respectively.

Conclusion

Staff concludes that Education Code sections 49069.3, 49069.5, and 49076.5 constitute reimbursable state-mandated programs on kindergarten through 12th grade school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3.)

2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

   Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) the location of the pupil's records; (2) the last school and teacher of the pupil; (3) the pupil's current grade level; and (4) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

4. Transfer a pupil's educational and health record within five working days of receipt of information regarding the new educational placement of a pupil in foster care. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)

5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a).)

Staff further concludes that Education Code 76234 constitutes a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activity:

> Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234.)

In addition, staff concludes the fee authority to charge a fee that does not exceed the actual cost of furnishing copies of any pupil/student records, set forth in Education Code sections 49065 and 76223, is applicable to the state-mandated programs described above. This fee authority does not extend to furnishing the first two transcripts of former pupils' records/students' records, or the first two verifications of various records of former pupils/students, or the search for or retrieval of any pupil/student record. Therefore, any revenue resulting from the fee authority set forth in Education Code sections 49065 and 76223 is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil/student records.

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and partially approve this test claim.

Original List Date: 6/26/2003
Last Updated: 4/26/2007
List Print Date: 01/29/2009
Claim Number: 02-TC-34
Issue: Student Records

Mailing Information: Final Staff Analysis

Mailing List

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Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849
Fax: (916) 327-0832

Mr. Jim Soland
Legislative Analyst's Office (B-29)
925 L Street, Suite 1000
Sacramento, CA 95814

Tel: (916) 319-8310
Fax: (916) 324-4281

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 12th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Michael H. Fine
Riverside Unified School District
Business Services & Government Relations
6050 Industrial Avenue
Riverside, CA 92504

Tel:
Fax:

Ms. Bonnie Ann Dowd
Palomar Community College District
1140 West Mission Road
San Marcos, CA 92069-1487

Tel: (760) 744-1150
Fax: (760) 761-3511

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814
Tel: (916) 446-7517
Fax: (916) 446-2011

Ms. Harmeet Barkschat
Mandate Resource Services, LLC
5325 Elkhorn Blvd. #307
Sacramento, CA 95842
Tel: (916) 727-1350
Fax: (916) 727-1734

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589
Tel: (951) 303-3034
Fax: (951) 303-6607

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730
Tel: (866) 481-2621
Fax: (866) 481-2682

Ms. Carol Bingham
California Department of Education (E-08)
Fiscal Policy Division
1430 N Street, Suite 5602
Sacramento, CA 95814
Tel: (916) 324-4728
Fax: (916) 319-0116

Mr. Steve Smith
Steve Smith Enterprises, Inc.
2200 Sunrise Blvd., Suite 220
Gold River, CA 95670
Tel: (916) 852-8970
Fax: (916) 852-8978

Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611-0599
Tel: (559) 327-9000
Fax: (559) 327-9129

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816
Tel: (916) 454-7310
Fax: (916) 454-7312

Mr. Erik Skinner
California Community Colleges
Chancellor's Office (G-01)
1102 Q Street
Sacramento, CA 95814-6511
Tel: (916) 323-7007
Fax: (916) 322-4783

Mr. David E. Scribner
Scribner & Smith, Inc.
2200 Sunrise Boulevard, Suite 220
Gold River, CA 95670
Tel: (916) 852-8970
Fax: (916) 852-8978

Mr. Joe Rombold
School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670
Tel: (916) 669-5116
Fax: (888) 487-6441

Mr. David Cichella
California School Management Group
3130-C Inland Empire Blvd.
Ontario, CA 91764
Tel: (209) 834-0556
Fax: (209) 834-0087

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816
Tel: (916) 324-0256
Fax: (916) 323-6527

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814
Tel: (916) 445-0328
Fax: (916) 323-9530

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1280
Sacramento, CA 95814
Tel: (916) 445-3274
Fax: (916) 449-5252

Ms. Jolene Tollenaar
MGT of America
455 Capitol Mall, Suite 600
Sacramento, CA 95814
Tel: (916) 712-4490
Fax: (916) 290-0121

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Claimant Representative
Tel: (916) 565-6104
Fax: (916) 564-6103

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99 Cal.App.4th 1193, 121 Cal.Rptr.2d 539, 02 Cal. Daily Op. Serv. 5966, 2002 Daily Journal D.A.R. 7481
(Cite as: 99 Cal.App.4th 1193)

C

AMERICAN BUILDINGS COMPANY, Plaintiff and Respondent,
v.
BAY COMMERICAL CONSTRUCTION, INC., et al., Defendants and Appellants.
No. C039375.

Court of Appeal, Third District, California.
June 28, 2002.

SUMMARY

A materials supplier sued a general contractor and a subcontractor's surety to recover $41,775 on a contractor's payment bond for materials supplied to the subcontractor on a public works project. The trial court granted summary judgment for plaintiff, finding that it gave proper notice before seeking recovery, pursuant to Civ. Code, § 3252, and that recovery was not limited by Civ. Code, § 3098 (to assert claim for payment against bond, claimant must, within 20 days of furnishing labor or materials for public work, serve preliminary 20-day notice). (Superior Court of Placer County, No. SCV10664, Larry D. Gaddis, Judge.)

The Court of Appeal affirmed. The court held that plaintiff gave proper notice before seeking recovery, pursuant to Civ. Code, § 3252, and that recovery was not limited by Civ. Code, § 3098. The notice may be given either pursuant to Civ. Code, § 3098, or as a special notice under Civ. Code, § 3252, subd. (b), which provides an exception to the former statute, if notice was not given pursuant to the former statute, and if written notice was given to the surety and bond principal within 15 days after recordation of the notice of completion. In this case, plaintiff complied with the 20-day requirement of Civ. Code, § 3098, subd. (d), only with respect to materials worth $625. However, partial compliance with Civ. Code, § 3098, does not bar recourse under Civ. Code, § 3252, subd. (b), as to amounts not furnished in compliance with the 20-day rule of Civ. Code, § 3098. Civ. Code, §§ 3098 and 3252, are to be read as complementary by construing Civ. Code, § 3252, subd. (b), to mean that a notice under that subdivision may be given if the notice given under Civ. Code, § 3098, is insufficient to recover the amount owing, whether in part or in whole. (Opinion by Blease, Acting P. J., with Morrison and Robie, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Public Works and Contracts § 18--Laborers and Material Providers--Bonds--Sureties--Action to Recover on Payment Bond--Statutory Notice Requirements--Complimentary Statutes.
In a supplier's action to recover $41,775 on a contractor's payment bond for materials supplied to a subcontractor on a public works project, the trial court properly granted summary judgment for plaintiff, finding that it gave proper notice before seeking recovery, pursuant to Civ. Code, § 3252, and that recovery was not limited by Civ. Code, § 3098 (to assert claim for payment against bond, claimant must, within 20 days of furnishing labor or materials for public work, serve preliminary 20-day notice). The notice may be given either pursuant to Civ. Code, § 3098, or as a special notice under Civ. Code, § 3252, subd. (b), which provides an exception to the former statute, if notice was not given pursuant to the former statute, and if written notice was given to the surety and bond principal within 15 days after recordation of the notice of completion. In this case, plaintiff complied with the 20-day requirement of Civ. Code, § 3098, subd. (d), only with respect to materials worth $625. However, partial compliance with Civ. Code, § 3098, does not bar recourse under Civ. Code, § 3252, subd. (b), as to amounts not furnished in compliance with the 20-day rule of Civ. Code, § 3098. Civ. Code, §§ 3098 and 3252, are to be read as complementary by

construing Civ. Code, § 3252, subd. (b), to mean that a notice under that subdivision may be given if the notice given under Civ. Code, § 3098, is insufficient to recover the amount owing, whether in part or in whole.
[See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 216; West's Key Number Digest, Public Contracts ⚷ 59.]
(2) Statutes § 22--Construction--Reasonableness.
A statutory provision must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity.

COUNSEL
Alan R. Barnes for Defendants and Appellants.
*1195
Glassberg, Pollak & Associates, Robert L. Pollak and Harold B. Auerbach for Plaintiff and Respondent.

BLEASE, Acting P. J.
Defendants Bay Commercial Construction, Inc., and AmWest Surety Insurance Co., appeal from a judgment rendered after the trial court granted plaintiff American Buildings Company's motion for summary judgment.

Plaintiff brought this action to recover $41,775 on a contractor's payment bond for materials supplied to a now bankrupt subcontractor on a public works project commissioned by the City of Roseville.

Civil Code section 3098 requires that a person, within 20 days of furnishing labor or materials for a public work, must serve a "preliminary 20-day notice" in order to assert a claim for payment against a payment bond. [FN1]Section 3252, subdivision (b), provides an exception if notice "was not given as provided in Section 3098," providing written notice was given the surety and bond principal within 15 days after recordation of the notice of completion.

FN1 References to a section are to the Civil Code.

Plaintiff filed a notice entitled "Preliminary Notice on Payment Bond" more than 20 days after furnishing the materials, except for the minor amount of $625, and was precluded from asserting a claim under section 3098 for the balance of $41,150. However, the trial court ruled the preliminary notice complied with the notice requirements of section 3252 and plaintiff was entitled to enforce payment on the payment bond under that section.

Defendants claim the notice filed by plaintiff cannot serve as a notice under section 3252 because it was labeled "Preliminary Notice on Payment Bond" and complied with the notice requirements of section 3098 in an amount of $625. Accordingly, that was the only sum owing on the bond. We disagree.

The purpose of subdivision (b) of section 3252 is to provide relief to a supplier of material or labor who, through lack of sophistication or inadvertence, fails to comply with the preliminary bond notice requirements of section 3098. The provisions are complimentary. Relief under section 3252*1196 is not barred by partial compliance with section 3098 and may be sought for the amount of any claim for which the section 3098 notice was *not* timely given.

We shall affirm the judgment.

Factual and Procedural Background

Defendant Bay Commercial was the prime contractor on a public works project commissioned by the City of Roseville. Bay Commercial entered into a subcontract with McKay Construction, Inc. Plaintiff furnished materials to McKay Construction and McKay Construction used these materials in the performance of its subcontract. AmWest Surety executed a payment bond, with McKay Construction as principal and AmWest as surety.

The total value of the materials plaintiff furnished was $41,775.05. McKay did not pay plaintiff for the materials, and was in bankruptcy at the time this

action was filed.

Plaintiff first furnished the materials for the project on August 26, 1999. On January 13, 2000, plaintiff served a written notice, entitled "Preliminary Notice on Payment Bond" by certified mail on AmWest, Bay Commercial and McKay Construction. The notice contained a description of the materials furnished (pre-engineered metal building components), the name of the company for whom the materials were furnished (McKay Construction), and the value of the materials furnished ($41,775.05). On the same date plaintiff served a "Stop Notice" on the City of Roseville on the same claim.

Plaintiff filed an action to recover on the payment bond on September 27, 2000. Defendants demurred, arguing plaintiff's January 13, 2000, notice was untimely because it was not provided within 20 days of the date plaintiff first supplied materials, as required by section 3098. The trial court overruled the demurrer, finding plaintiff was entitled to rely on section 3252, subdivision (b), which allows recovery on a payment bond in situations where the claimant did not give notice as provided in section 3098.

The parties do not dispute the notice was given the surety and bond principal, as required by section 3227, [FN2] within 15 days of recordation of the notice of completion of the project and functionally complied with the notice requirements of section 3252, subdivision (b).*1197

> FN2 The requirements for a special preliminary notice on a payment bond pursuant to section 3252, subdivision (b), are "as provided in Section 3227." The notice must contain:
>
> "(1) The kind of labor, services, equipment, or materials furnished or agreed to be furnished by the claimant.
>
> "(2) The name of the person to or for whom the labor, services, equipment, or materials were furnished.
>
> "(3) The amount in value, as near as may be determined, of any labor, services, equipment, or materials already furnished or to be furnished." (§ 3227, subd. (b).)
>
> The notice must be served by personal service, or by certified or registered mail. (§ 3227.) The notice must be served on "the surety and the bond principal as provided in Section 3227 within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement." (§ 3252, subd. (b).)

Plaintiff moved for summary judgment. Defendants opposed the motion, again asserting that section 3098, subdivision (d) limits the amount for which a claimant may recover on a payment bond to the material furnished within 20 days prior to service of the preliminary notice or thereafter. Defendants claimed plaintiff supplied materials worth only $625.78 during that period.

The trial court concluded the notice given by plaintiff was not a "Preliminary Notice" pursuant to section 3098, subdivision (a) or (d), but did qualify as a notice to the surety and bond principal pursuant to section 3252, subdivision (b).

We agree with the trial court the notice given was proper pursuant to section 3252, and that plaintiff's recovery is not limited by section 3098, subdivision (d). We shall therefore affirm the judgment.

Discussion

(1a) Before a claimant may recover on a payment bond on a public works project, it must give a notice. The notice may be given either as a 20-day preliminary notice pursuant to section 3098, or as a special notice provided in section 3252, subdivision

(b).

Section 3098 provides that a 20-day preliminary notice must be given prior to the "assertion of a claim" against a payment bond. [FN3]Section 3098 defines a "[p]reliminary 20-day notice" as "a written notice from a claimant that was given prior to the assertion of a claim against a payment bond ...." [FN4]The phrase "assertion of a claim" is given effect in subdivision (d), which states that a claimant is "*entitled* to assert a claim against a payment *1198 bond" only for "labor, service, equipment or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter." (Italics added.)

> FN3 The section 309820-day preliminary notice also serves as notice given prior to the filing of a stop notice on public work. A stop notice requires the public entity to withhold funds due the contractor in an amount sufficient to pay the stop notice claimant. (§ 3098, subd. (a); *Connolly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 803, 809 [132 Cal.Rptr. 477, 553 P.2d 637].) The stop notice is not at issue in this case.
>
> FN4 Subdivision (a) of section 3098, in pertinent part, states: "no payment shall be withheld from the contractor pursuant to that notice unless the person has caused written notice to be given to the contractor, and the public agency concerned, not later than 20 days after the claimant has first furnished labor, services, equipment, or materials to the jobsite, stating with substantial accuracy a general description of labor, service, equipment, or materials furnished or to be furnished, and the name of the party to whom the same was furnished. This notice shall be served by mailing the same by first-class mail, registered mail, or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, or his or her residence, or by personal service."
>
> Subdivision (d) provides that if the notice is not given pursuant to subdivision (a), the claimant may give notice thereafter; however, "[t]he claimant shall ... be entitled to assert a claim against a payment bond and file a stop notice only for labor, service, equipment, or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter."

Accordingly, to file a notice which "assert[s] a claim," and thus complies with section 3098, the claimant must be "entitled to assert a claim" and to do so must comply with the 20-day requirement. [FN5] Thus, not surprisingly, a "preliminary 20-day notice," as defined by section 3098, is one which complies with the 20-day requirement. As we shall see, that is the section 3098 notice to which section 3252, subdivision (b), refers.

> FN5 The 20-day requirement is amplified in subdivision (d) to include materials provided "at any time thereafter," meaning after the filing of a 20-day notice. (§ 3098, subd. (d).) The bond claimant need not file multiple notices for each 20-day period during which materials or labor are furnished.

In this case plaintiff complied with the 20-day requirement of section 3098, subdivision (d), only with respect to materials worth $625. Seizing on this partial compliance and the fact plaintiff characterized the notice as a preliminary bond notice, defendants assert plaintiff cannot claim "the 20-day public work preliminary bond notice was *not* given as provided in Section 3098," a precondition to recovery under the notice provisions of subdivision (b) of section 3252. [FN6] (Italics added.) The argument sounds in estoppel, although the defendants do not assert, nor could they, that they were mislead by the notice given them since plaintiff clearly

gave notice of a claim for full payment on the payment bond. *1199

FN6 Section 3252 states in full:

"(a) With regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a public work, a claimant shall give the 20-day public works preliminary bond notice as provided in Section 3098.

"(b) If the 20-day public work preliminary bond notice was not given as provided in Section 3098, a claimant may enforce a claim by giving written notice to the surety and the bond principal as provided in Section 3227 within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement."

Defendants' argument comes down to the claim that partial compliance with section 3098 bars recourse under section 3252, subdivision (b), as to amounts which were *not* furnished in compliance with the 20-day rule of section 3098. The immediate difficulty with the argument is there is no such requirement in the language of section 3252. As noted, recourse to the notice provisions of subdivision (b), may be had only "[i]f the 20-day public work preliminary bond notice was not given as provided in Section 3098 ...." Defendants do not deny that a section 3098 notice was *not* provided with respect to the amounts sought on the payment bond under section 3252, other than $625. They do not say by what construction of the statute or public policy they arrive at their conclusion. For them "a little notice is a dangerous thing."

The further difficulty with defendants' view is that plaintiff would be penalized for serving notice on more people and at an earlier time than required by section 3252, subdivision (b). Had plaintiff served only the surety and the bond principal, the notice unquestionably would not have complied with section 3098, subdivision (d), which requires that notice also be given to the contractor and the public agency. Had the notice not complied with section 3098, defendants could not now assert that plaintiff's recovery on the bond is limited by section 3098.

Defendants' interpretation would allow a claimant who gives notice only after the project is completed to recover its entire claim, while a claimant who may have given notice earlier could recover only a portion of its claim. The interpretation of these provisions creates a trap for the unwary subcontractor, who would risk recovery of the entire amount owed by giving a late 20-day preliminary notice, when he or she could have recovered the entire amount simply by waiting and asserting a claim on the payment bond, a trap which the Legislature was at pains to avoid.

As originally enacted, section 3252 provided a claimant on a payment bond must give notice within 90 days of the date on which the last labor, services, equipment or materials were furnished. (Stats. 1969, ch. 1362, §§ 3091, 3252, pp. 2754, 2779.) It did not require that a 20-day preliminary notice be given prior to asserting a claim on a payment bond. Thus, a supplier of labor, services, etc., who failed to give notice in time to recover on a stop notice, could still recover the entire amount from a payment bond by giving notice within 90 days after the labor, services, etc. were furnished.

Both sections 3252 and 3098 were amended in 1994 by means of Assembly Bill No. 3357 (1993-1994 Reg. Sess.). As introduced the bill eliminated *1200 the 90-day notice provision of section 3252 and required a 20-day preliminary notice to enforce a claim on a payment bond under section 3098. (Assem. Bill No. 3357 (1993-1994 Reg. Sess.) as introduced Feb. 24, 1994.) The Assembly Committee on the Judiciary bill analysis states the amendment was designed to ameliorate

the problem of surprise to the original contractor by the filing of a late claim by subcontractors. "In such a case," the analysis stated, "the original contractor is often unable to protect himself or herself against such an event (through the use of joint checks or conditional releases) because he or she is simply unaware of the 5th 'tier' and 6th 'tier' sub-subcontractor." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 3357 (1993-1994 Reg. Sess.) May 11, 1994.) The analysis asserted that a further advantage of the bill would be to allow the various preliminary notices required by law to be given concurrently.

The bill was amended on June 16, 1994. Subdivision (d) was added to section 3098, allowing a claimant to file a preliminary notice at any time after 20 days from the date the claimant first furnished labor, services, etc., to the jobsite, but limiting recovery in such cases to the value of labor, services, etc., furnished 20 days prior to or any time after the giving of the notice. (Sen. Amend. to Assem. Bill No. 3357 (1993-1994 Reg. Sess.) June 16, 1994.)

Thereafter, the Senate Judiciary Committee considered a further and last revision. The committee analysis sets forth the issue before the committee as follows: "Should the procedure for a subcontractor's or material supplier's assertion of a claim against a payment bond of the general contractor be amended to require either the early filing of a preliminary notice, or the filing of a claim with the surety within 15 days after a recorded notice of completion, as a condition of asserting that claim?" (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 3357 (1993-1994 Reg. Sess.) as amended June 16, 1994.)

The analysis notes the proposed revision responded to a concern that laborers and material suppliers who are unsophisticated or unaware of the mechanic's lien law procedures might unfairly have their rights cut off by the early notice provisions of the original bill. The proposed revision was intended to allow "for full payment of provided services or materials so long as a claim is made with 15 days after recordation of a notice of completion." The revision appears as section 3252, subdivision (b) in the August 23, 1994, amendment of the bill. (Sen. Amend. to Assem. Bill No. 3357 (1993-1994 Reg. Sess.) Aug. 23, 1994.)

(2) A statutory provision "must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the ***1201** lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity." (*DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18 [194 Cal.Rptr. 722],overruled on other grounds, *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 15 [78 Cal.Rptr.2d 1, 960 P.2d 1031].) (1b) From this history it may be said the Legislature intended section 3252, subdivision (b) to give the unsophisticated or unaware laborer or supplier a reasonable opportunity to recover a claim upon a payment bond, but did not intend to preclude them from filing an earlier notice of a potential claim.

We read sections 3098 and 3252 as complementary by construing section 3252, subdivision (b) to mean that a notice under that subdivision may be given if the notice given under section 3098 is insufficient to recover the amount owing whether in part or in whole.

We conclude that where timely notice is given meeting the requirements of section 3252, subdivision (b), the claimant may enforce a claim on a payment bond for the full amount of labor, material and services furnished the public project that are not otherwise recovered under section 3098.

Disposition

The judgment is affirmed.

Morrison, J., and Robie, J., concurred. ***1202**

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753 P.2d 689
45 Cal.3d 208, 753 P.2d 689, 246 Cal.Rptr. 733, 46 Ed. Law Rep. 781
(Cite as: 45 Cal.3d 208)

FONTANA UNIFIED SCHOOL DISTRICT,
Plaintiff and Appellant,
v.
NANCY BURMAN, Defendant and Appellant
L.A. No. 32230.

Supreme Court of California
May 12, 1988.

SUMMARY

In a hearing by a commission on professional competence to consider charges against a tenured teacher initiated by a school district's notice of intent to dismiss her (Ed. Code, § 44932, subd. (a)), the commission determined that the teacher should not be dismissed, even though it found her guilty of dishonesty, a cause for discipline and a ground for dismissal. In mandamus proceedings by the school district, the trial court denied the writ. (Superior Court of San Bernardino County, No. 223230, Charles Bierschbach, Judge.) The Court of Appeal, Fourth Dist., Div. Two, No. E001561, reversed.

The Supreme Court reversed the judgment of the Court of Appeal with directions to enter judgment affirming the trial court in part and reversing in part and directing it to enter judgment denying the petition for a writ of mandate and to award the teacher reasonable costs and attorney fees. Stating the principal question on appeal was whether the commission had the discretion to determine that the teacher should not be dismissed as a permanent employee once it found her guilty of dishonesty within the meaning of Ed. Code, § 44932, subd. (a)(3), or whether, as the Court of Appeal found, her dismissal was mandatory once cause for discipline on that ground had been found to exist, the court held a commission on professional competence is empowered to exercise its collective wisdom and discretion to determine that dismissal is not appropriate in a given case. The court also held the commission was not an indispensable party in the administrative mandamus proceedings. (Opinion by Arguelles, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Schools § 46--Teachers--Suspension or Dismissal-- Appeals Before Personnel Commission--Commission on Professional Competence-- Discretion.
In a hearing by a commission on professional competence to consider charges against a tenured teacher initiated by the school district's notice of intent to dismiss her (Ed. Code, § 44932, subd. (a)), the commission had the discretion to determine that the teacher should not be dismissed, even though the commission found her guilty of dishonesty, a cause for discipline and a ground for dismissal. Under Ed. Code, § 44944, subd. (c), a commission has only two options when a school district seeks only to dismiss a teacher: It may choose to dismiss or not to dismiss. The fact the commission found a cause for discipline existed did not mandate the imposition of the only statutorily authorized discipline of dismissal and it was prohibited from imposing suspension. The commission's role is not limited to resolving the factual question whether the charged conduct occurred, but also to resolve the ultimate issue presented by a disciplinary proceeding: whether the conduct demonstrates such unfitness to teach as to warrant terminating the teacher's employment.
[See **Cal.Jur.3d**, Schools, § 440; **Am.Jur.2d**, Schools, § 185.]
(2) Statutes § 21--Construction--Legislative Intent.
A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. It is required to give effect to statutes according to the usual, ordin-

ary import of the language employed in framing them, and, if possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided, and when used in a statute, words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.

(3) Schools § 40--Teachers--Suspension or Dismissal--Statutory Scheme.
Viewed in the context of the entire statutory scheme, a fair reading of Ed. Code, § 44944, recognizes the discretion given both an employing school district and a commission on professional competence in disciplinary matters. The district may determine when to seek disciplinary action and what discipline to seek. It may, by choosing to pursue only a dismissal sanction, preclude the commission from imposing suspension. And it may, by invoking the procedures of Ed. Code, § 44939, accompany the notice of dismissal with an immediate suspension of the employee without pay. But nothing in the statutory scheme indicates that the commission must be bound by the district's choice to the extent that it is required to approve the employee's dismissal if it is not persuaded, in the exercise of its discretion, that an offense is serious enough to warrant that step.

(4) Statutes § 45--Construction--Presumptions--Prior Judicial Construction.
When the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction. The judicial construction given words and phrases are presumed adopted when those portions of an existing statute are used in a subsequent legislative enactment.

(5) Administrative Law § 104--Judicial Review and Relief--Methods-- Administrative Mandamus--Parties--Dismissal of Teacher--Commission on Professional Competence--Indispensable Parties.
In a mandamus proceeding (Code Civ. Proc., § 1094.5) by a school district to review a decision of a commission on professional competence that the penalty of dismissal should not be imposed on a tenured teacher, in which the teacher was named the respondent, the commission was not an indispensable party. The commission is not a standing body but an ad hoc group whose decision, once made, becomes the decision of the employing school district (Ed. Code, § 44944, subd. (c)), and the commission serves no identifiable function in the remainder of the review process. As the commission need not be before the court to enable the court to accord complete relief between the employing school district and the employee, it is not an indispensable party within the meaning of Code Civ. Proc., § 389, subd. (a).

(6) Costs § 20--Attorney Fees--Statutory Provisions--Teacher Dismissal Proceedings.
Although Ed. Code, § 44944, subd. (e), authorizing the payment of attorney fees to an employee whom the commission on professional competence has determined should not be dismissed or suspended, does not expressly provide for the award of fees if judicial review of a commission decision is sought, fees should be awarded to a prevailing employee for any such review proceedings as well, and costs should be awarded under the general provisions of Code Civ. Proc., § 1032, subd. (b) (costs to prevailing party). The amount of attorney fees is not limited by Gov. Code, § 800, allowing $1,500 in costs and attorney fees on determination that the administrative proceeding was the result of arbitrary or capricious action.

COUNSEL
Wagner, Sisneros & Wagner and John J. Wagner for Plaintiff and Appellant.
Joseph R. Symkowick and Michael E. Hersher as

Amici Curiae on behalf of Plaintiff and Appellant.
George W. Shaeffer, Jr., and Silver, Kreisler, Goldwasser & Shaeffer for Defendant and Appellant.
A. Eugene Huguenin, Jr., Kirsten L. Zerger, Diane Ross and Ramon E. Romero as Amici Curiae on behalf of Defendant and Appellant.

ARGUELLES, J.

The decision of a school district to dismiss or to suspend a permanent certificated employee, such as a tenured teacher, for disciplinary or performance-related reasons is subject to review at the employee's request by a local commission on professional competence. The commission is charged by statute with the responsibility of determining whether the employee should or should not be dismissed or suspended, but its powers are circumscribed in part by the employing district's initial choice of sanction. Under Education Code section 44944, subdivision (c), [FN1] the commission has no power "to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions" and may impose suspension as a sanction only if the employing district sought that result.

> FN1 All further statutory references are to the Education Code unless otherwise indicated.

We are called upon in this case to decide whether the statute requires a local commission on professional competence to sustain a school district's notice of intent to dismiss a tenured elementary school teacher whenever the commission finds that one of the statutorily authorized grounds for dismissal exists, or whether such a commission has discretion to determine that dismissal is not warranted although cause for some measure of *212 discipline may exist. We conclude the Court of Appeal erred in holding the commission had no discretion and therefore reverse its order mandating the teacher's discharge.

Facts

The facts of this case are not complex and are undisputed on all material points. Nancy Burman, a tenured teacher employed for 14 years with the Fontana Unified School District in San Bernardino County (district) and then serving as a school principal, decided some time prior to December 8, 1983, to call in sick so that she could attend the first California landing of the space shuttle at Edwards Air Force Base on that day. She arranged for a third party to call her school on December 8 to report that she was ill and would not be at work. In fact, she was not ill and the information given at her request was false.

On the evening of December 7, Burman had dinner with the principal of another school. During the course of a long evening that extended into the following morning, Burman (a) invited a custodian from the friend's school to join the two women for dinner during the custodian's duty hours, (b) returned to her own school after dinner and invited the custodian on duty there to go along with the three to a nightclub, where the group remained for several hours and consumed alcoholic beverages, and (c) invited the others to accompany her to see the space shuttle land at 5 in the morning. The shuttle was delayed by computer problems, and the group left without seeing the landing. Burman returned to her house early that afternoon, where she was confronted by the district superintendent and other district personnel. She initially lied about where she had been that day and denied knowing where the other principal was, but confessed after a short period of time that she had not been ill and that the other principal was at that moment inside the house.

The district's board of education voted to discharge Burman for immoral conduct. Proceeding under section 44939, the district placed Burman on immediate suspension without pay and served notice on her that she would be dismissed 30 days later unless she demanded a hearing. [FN2]The notice set *213 forth four of the statutorily authorized grounds for dismissal of a teacher, charging Burman with immoral conduct, dishonesty, evident unfitness for

service, and persistent violation of or refusal to obey district regulations. [FN3]

FN2 Section 44939 provides, in pertinent part: "*Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent employee of the district with immoral conduct*, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, with violation of Section 51530, with knowing membership by the employee in the Communist Party or with violation of any provision in Sections 7001 to 7007, inclusive [sections repealed by Stats. 1981, ch. 470, § 11, p. 1738], *the governing board may, if it deems such action necessary, immediately suspend the employee from his duties and give notice to him of his suspension, and that 30 days after service of the notice, he will be dismissed, unless he demands a hearing.*" (Italics added.)

This portion of section 44939 augments, at the option of a district and in the limited circumstances specified, the procedures found in section 44934 for disciplining a permanent employee. Section 44934 similarly requires a written statement of charges and 30 days notice of the intent to take disciplinary action, but incorporates by reference the full (and more extensive) range of statutory grounds for imposing discipline (see § 44932, subd. (a)) and authorizes proceedings to suspend the employee for a specified period of time rather than to dismiss. Immediate suspension of the employee without pay before expiration of the 30-day notice period is available only if the district institutes a dismissal proceeding based upon one of the grounds specified in section 44939.

FN3 The grounds for dismissal of a teacher are specified in section 44932, subdivision (a): "No permanent employee shall be dismissed except for one or more of the following causes: [¶] (1) Immoral or unprofessional conduct. [¶] (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof. [¶] (3) Dishonesty. [¶] (4) Incompetency. [¶] (5) Evident unfitness for service. [¶] (6) Physical or mental condition unfitting him to instruct or associate with children. [¶] (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him. [¶] (8) Conviction of a felony or of any crime involving moral turpitude. [¶] (9) Violation of Section 51530 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947. [¶] (10) Violation of any provision in Sections 7001 to 7007, inclusive, of this code [sections repealed by Stats. 1981, ch. 470, § 11, p. 1738]. [¶] (11) Knowing membership by the employee in the Communist Party. [¶] (12) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children."

Subdivision (b) of section 44932 provides in turn that, unless the question is governed by a collective bargaining agreement adopted in accordance with Government Code section 3543.2, a permanent employ-

ee may be suspended for unprofessional conduct, a ground that under subdivision (a)(1) may also support the dismissal of such an employee. These two provisions are supplemented by section 44933, which allows the suspension or the dismissal of a permanent employee for unprofessional conduct consisting of acts or omissions other than those specified in section 44932.

Burman timely requested a hearing under section 44944, subdivision (a), and a commission on professional competence was convened to consider the matter. [FN4]The commission, on a two-to-one vote, found her guilty only of *214 the dishonesty charge. The charges of immoral conduct, evident unfitness for duty, and persistent violation of or refusal to obey reasonable regulations of the district were not sustained.

FN4 Subdivision (b) of section 44944 specifies the composition of the body charged with conducting the hearing called for in the section and provides, in pertinent part: "The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. ... [¶] The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee."

Although the commission made a finding that "[c]ause exists for disciplinary action against respondent under Education Code Section 44932(a)(3), based upon the charge of dishonesty," it found dismissal unwarranted. The commission noted that Burman had a previously unblemished record and made an express finding that her actions "represented isolated conduct ... not likely of repetition under any set of circumstances in the future." The commission also found by way of mitigation that Burman had not been involved in any prior disciplinary action, that she had received no prior warnings or counseling with regard to abuse of sick leave or her dealings with school custodians, that there was no evidence of any prior abuse of sick leave, and that her evaluations as a district employee had been satisfactory or better. On this record, the commission determined that Burman was not unfit to continue as a teacher and concluded that "the penalty of dismissal should not be imposed." [FN5]

FN5 The commission observed that it would have unanimously found Burman "guilty of unprofessional conduct within the meaning of Sections 44932(a)(1) and 44933" - apparently on the basis of her initial dishonest responses to the superintendent's questions and what it seems to have viewed as "questionable conduct" with the custodians - and would have ordered her suspended had that course been open to it. As the district had sought only Burman's dismissal, the proceeding was not "a suspension proceeding" within the meaning of section 44944, subdivision (c), and the commission lacked the authority to order Burman suspended.

The commission's finding that "[c]ause exists for disciplinary action against respondent under Education Code Section 44932(a)(3), based upon the charge of dishonesty" was therefore technically incorrect - as suspension, which the commission

deemed the appropriate discipline, is available only in a proceeding under section 44932, subdivision (b) or section 44933, and cause may have existed for disciplinary action under those statutes, not under subdivision (a) of section 44932. We view the commission's "finding" as an attempt to specify the proper *substantive* ground for the discipline it thought appropriate, not as a determination in favor of dismissal inconsistent with its express conclusion that Burman was not unfit to continue as a teacher.

The district sought review in the superior court by petition for a writ of mandate. [FN6]The petition named only Burman as the respondent, and she demurred on the ground that the commission was the proper party *215 respondent and the district had accordingly failed to join an indispensable party within the applicable statute of limitations. The trial court overruled the demurrer and considered the merits of the matter, exercising its independent judgment on the evidence as required by section 44945. The court incorporated the commission's findings and decision into its own statement of decision and entered judgment denying the writ, also awarding Burman $1,500 in costs and attorney fees.

FN6 Section 44945 specifies that "[t]he decision of the Commission on Professional Competence may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. ..." Government Code section 11523 in turn states that "[j]udicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure ...." A proceeding in administrative mandamus commenced by a petition under Code of Civil Procedure section 1094.5 is the proper avenue for review of a decision rendered under section 44944. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 283 [185 Cal.Rptr. 203].)

The district appealed on the merits, and Burman cross-appealed to challenge the overruling of her demurrer and the trial court's failure to award her a greater amount in costs and attorney fees. The Court of Appeal reversed, rejecting Burman's contention that the commission was an indispensable party and concluding that under section 44944, subdivision (c), neither the commission nor the trial court had any alternative but to rule that Burman should be dismissed "once a cause for discipline under Education Code section 44932, subdivision (a)(3) had been found ... to exist ...." We granted review to determine whether the Court of Appeal properly interpreted the statute.

Discussion

1. *Commission Discretion*

(1a) The principal question on this appeal is whether the commission had the discretion to determine that Burman should not be dismissed as a permanent employee once it found her "guilty of dishonesty within the meaning of Education Code Section 44932(a)(3)," or whether, as the Court of Appeal held, her dismissal was mandatory once cause for discipline on that ground had been found to exist. Resolution of this question requires us to determine the proper interpretation of subdivision (c) of section 44944, a task we cannot perform without a clear understanding of the statutory framework within which a commission on professional competence acts. We turn first to an examination of that subject.

A. *The Statutory Framework.* The provisions of the Education Code allow a district substantial leeway

in determining when to take disciplinary action against a permanent employee and what action to take. Except in the case of an employee charged with certain sex offenses (see §§ 44010, 44940), a district is not required to take action. In all other situations, the district has discretion. It *may*, if it so chooses, initiate disciplinary proceedings under section 44934. It *may*, if it so chooses and if one of the grounds specified in subdivision (a) of section 44932 exists, seek the dismissal rather than the suspension of an employee. And it *may*, if it so chooses and if the ground for dismissal is also one of those specified in section 44939, *216 immediately suspend the employee without pay pending the disposition of the dismissal proceeding. Its discretion is limited only by the requirement that the ground asserted as the basis for taking disciplinary action be one authorized by statute *and* by the provision for review of its decision by a commission on professional competence if the employee requests a hearing.

Sections 44932 and 44933 specify the grounds for dismissal and suspension of teachers. Subdivision (a) of section 44932 identifies 12 specific grounds - including immoral or unprofessional conduct and, most relevant for present purposes, dishonesty - for which a permanent employee may be dismissed. It states, in fact, that "[n]o permanent employee shall be dismissed *except for* one or more of [those] causes ..." (italics added). Subdivision (b) provides in turn that a permanent employee may be suspended on grounds of unprofessional conduct, and section 44933 indicates that either dismissal or suspension may be sought on a charge of unprofessional conduct consisting of acts or omissions other than those enumerated in section 44932. [FN7]In the present case, the district proceeded solely on the basis of subdivision (a) of section 44932 and sought only to dismiss, not to suspend, Burman.

> FN7 Although "unprofessional conduct" is identified in section 44932 as one of the 12 specific grounds for which a permanent employee may be dismissed, it appears to have a broader import than the others. The phrase refers generally to conduct demonstrating unfitness to teach (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174 [197 Cal.Rptr. 390]), and a particular act or omission on the part of a teacher may constitute unprofessional conduct as well as one of the other enumerated grounds. (*Id.* at p. 1175; see *Board of Education v. Swan* (1953) 41 Cal.2d 546, 551 [261 P.2d 261].)Section 44933 - by providing that unprofessional conduct may consist of "acts or omissions other than those specified in section 44932" - suggests that each of the specific acts or omissions listed in subdivisions (a)(2) through (a)(12) of section 44932 may also amount to unprofessional conduct supporting either a dismissal proceeding under subdivision (a)(1) or a suspension proceeding under subdivision (b).

The distinction between charges brought under subdivision (a) of section 44932 and those brought under subdivision (b) of that section - and between an attempt under either section 44932 or 44933 to dismiss an employee and an attempt under the statutes only to suspend - is significant. Subdivision (c) of section 44944 offers a commission on professional competence only three choices in resolving a disciplinary proceeding. It must determine either that the employee should be dismissed, that the employee should be suspended, or that the employee should not be dismissed or suspended. And the subdivision expressly provides: "The commission shall not have the power to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension ... shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933." [FN8]*217

> FN8 Subdivision (c) of section 44944 provides in full: "The decision of the Com-

> mission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be, solely: [¶] (1) That the employee should be dismissed. [¶] (2) That the employee should be suspended for a specific period of time without pay. [¶] (3) That the employee should not be dismissed or suspended. [¶] The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors. [¶] The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph (2) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933. [¶] The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board. [¶] The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section. [¶] The governing board and the employee shall have the right to be represented by counsel."

The statutory scheme thus limits a commission to only two options where, as here, a school district seeks only to dismiss a teacher under subdivision (a) of section 44932. The commission then may not impose suspension, nor may it achieve the same result by ordering dismissal and staying its order on conditions amounting to probation. [FN9]It may only choose to dismiss or not to dismiss.

FN9 The latter possibility, in fact, was foreclosed by the Legislature in direct response to a Court of Appeal decision (*Governing Board v. Commission on Professional Competence* (*Pickering*) (1977) 72 Cal.App.3d 447 [140 Cal.Rptr. 206]) holding that the power to dismiss included the power to stay an order of dismissal on conditions of probation, effectively resulting in suspension rather than dismissal. (See *Powers v. Commission on Professional Competence* (1984) 157 Cal.App.3d 560, 580-581 [204 Cal.Rptr. 185].) Within six months of the *Pickering* decision, a bill was introduced to "clarify that the commission is limited in its disposition of the case to dismissing the employee or not dismissing the employee" (Legis. Counsel's Dig., Assem. Bill No. 2401, 4 Stats. 1978 (Reg. Sess.) Summary Dig., p. 324), and subdivision (c) of section 44944 was amended to provide: "The commission shall not have the power to dispose of the charge of dismissal by imposing probation, suspension of a dismissal or a nondismissal, or other alternative sanctions." (Stats. 1978, ch. 1172, § 1, p. 3782.)

Although the section was later amended by the Hughes-Hart Educational Reform Act of 1983 (Stats. 1983, ch. 498, § 59, p. 2086) to read in its present form, and the explicit bar against "suspension of a dismissal or a nondismissal" was eliminated, the legislative history indicates that no substantive change was intended. The Senate's attempt to give a commission on professional competence the authority to dispose of a charge of dismissal by suspending the employee (Sen. Bill No. 813 (1982-1983 Reg. Sess.) as amended May 16, 1983) was rejected by the Assembly in favor of the language of the 1978 amendment (Assem. Amend. to Sen. Bill No. 813 (1982-1983 Reg. Sess.) June 8, 1983), and the final bill reported out of conference es-

> tablished the present statutory scheme - for the first time differentiating between dismissal and suspension charges, and expressly limiting the power to suspend to proceedings seeking that end. In light of that limitation, no explicit prohibition against "suspension of a dismissal or a nondismissal" was necessary to effectuate the legislative intent.

In the present case, the commission chose not to dismiss. Although the trial court upheld the commission's action, the Court of Appeal found the decision improper, ruling that if a commission finds that cause for discipline exists, then, as a matter of law, discipline must be imposed, and that, in light of the statutory limitations on the commission's power to impose suspension, the discipline here could only be dismissal. Burman contends ***218** that the Court of Appeal misinterpreted section 44944, subdivision (c) as barring the exercise of discretion and requiring a commission to authorize dismissal even when the commission concludes that dismissal is inappropriate. The proposition that section 44944, subdivision (c) compels the imposition of discipline, when a finding is made that cause for discipline exists, thus lies at the heart of this case. We turn then to that question.

B. *Education Code Section 44944.* We are guided by numerous precepts of statutory construction as we approach the task of determining whether subdivision (c) of section 44944 should be interpreted to bar the exercise of discretion by a commission on the propriety of the sanction of dismissal where cause for discipline is established. (2) "We begin with the fundamental rule that a court 'should ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.] In determining such intent '[t]he court turns first to the words themselves for the answer.' [Citation.] We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citations.] 'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.' [citation]; 'a construction making some words surplusage is to be avoided.' [Citation.] 'When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]" (*Palos Verdes Faculty Assn.* v. *Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 658-659 [147 Cal.Rptr. 359, 580 P.2d 1155] [quoting *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224]].)

(1b) The "words [of the statute] themselves" do not compel the interpretation advanced by the Court of Appeal. Section 44932 provides that a teacher cannot be dismissed unless certain grounds are found to exist; it does not provide that a teacher *must* be dismissed if one of those grounds is found. Similarly, section 44944 provides that the commission is to decide whether a teacher should or should not be dismissed; it does not provide that the commission *must* dismiss a teacher if it finds that one of the statutory grounds exists.

(3) Viewed in the context of the entire statutory scheme, a fair reading of section 44944 recognizes the discretion given both an employing school district and a commission. The district may determine when to seek disciplinary action and what discipline to seek. It may, by choosing to pursue only a dismissal sanction, preclude the commission from imposing ***219** suspension. [FN10]And it may, by invoking the procedures of section 44939, accompany the notice of dismissal with an immediate suspension of the employee without pay. But nothing in the statutory scheme indicates that the commission must be bound by the district's choice to the extent that it is required to approve an employee's dismissal if it is not persuaded, in the exercise of its discretion, that an offense is serious enough to war-

rant that step.

> FN10 By way of example, the commission's inability here to impose discipline on an employee who plainly merited some measure of punishment flowed not from the commission's exercise of a power it did not possess (i.e., to choose not to dismiss Burman) but from the district's decision to take an all or nothing tack - exercising its power to suspend Burman immediately without pay and seeking perhaps to preclude the commission from determining, as it indicated it would have, that suspension was the more appropriate sanction for Burman's misconduct.

(1c) We thus cannot accept the proposition that discipline *must* be imposed, when a finding is made that cause for discipline exists. The Court of Appeal thought this the clear intent of the 1978 legislative nullification of the decision in *Pickering, supra*, 72 Cal.App.3d 447, that a commission had the power to stay an order of dismissal. But the Legislature acted only to bar a commission from suspending the impact of its order once the statutory determination was made "[t]hat the employee should be dismissed" or "[t]hat the employee should not be dismissed ...." Nothing in either the 1978 or later amendments purported to limit a commission's ability to determine that, although cause for *some* discipline existed, the harsh sanction of *dismissal* was not warranted. [FN11]

> FN11 Indeed, the fact that the Legislature acted in 1978 to foreclose a commission from suspending "a nondismissal," as well as a dismissal, suggests on the face of things that a commission had been and remained empowered to choose not to dismiss, and was precluded only from attempting to make other than an all-or-nothing decision.

(4) In addition to the general rules for ascertaining legislative intent previously noted, "[i]t is a well-established principle of statutory construction that when the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction." (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734 [180 Cal.Rptr. 496, 640 P.2d 115, 30 A.L.R.4th 1161].) The judicial construction given words and phrases are presumed adopted when those portions of an existing statute are used in a subsequent legislative enactment. (*Ibid.; People v. Curtis* (1969) 70 Cal.2d 347, 355 [74 Cal.Rptr. 713, 450 P.2d 33].)

This presumption facilitates our examination of a commission's role in disciplinary matters. We held in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 [82 Cal.Rptr. 175, 461 P.2d 375], that the *220 phrase "immoral or unprofessional conduct," one of the statutory grounds for dismissing or suspending a permanent employee (§ 44932, subd. (a)(1)), embraced only conduct demonstrating unfitness to teach. Reasoning that the phrase was otherwise too vague and too broad to withstand constitutional challenge, we held that the alleged misconduct of a tenured teacher should be measured against seven criteria in determining whether dismissal was warranted: (1) the likelihood that the conduct would recur; (2) the existence of aggravating or extenuating circumstances; (3) the impact of publicity; (4) the effect on teacher-student relationships; (5) any disruption of the educational process; (6) the employee's motive for the conduct; and (7) the proximity or remoteness in time of the conduct. (*Id.* at p. 230; see also *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696-697 [139 Cal.Rptr. 700, 566 P.2d 602]; *San Dieguito High School Dist., supra*, 135 Cal.App.3d at p. 284.) The Legislature must be presumed to have adopted this construction in its continued use of the identical phrase in both the 1978 and the more extensive 1983 amendments to the Education Code.

(1d) Application of this standard indicates that a commission has broad discretion in disciplinary matters. Its role is not merely to determine whether the charged conduct in fact occurred, but to decide whether that conduct - measured against the *Morrison* criteria (*supra*, 1 Cal.3d 214) - demonstrates unfitness to teach and thus constitutes "immoral or unprofessional conduct" within the meaning of the statute. [FN12]

> FN12 Although *Morrison* concerned itself only with the proper definition of "immoral or unprofessional conduct," its analysis requires an identical approach to an attempt to discipline a permanent employee on grounds of dishonesty, as here. Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute "dishonesty" as a ground for discipline.

We find other provisions relevant to our inquiry in section 44944. Subdivision (c) itself does not merely restrict a commission's options for the disposition of a particular disciplinary proceeding; it also requires a commission to issue "a written decision containing findings of fact, [and] determinations of issues ...." (§ 44944, subd. (c).) That a commission must determine issues as well as make findings of fact supports our conclusion that its role is not limited to resolving the factual question whether the charged conduct occurred, but that it is to resolve the ultimate issue presented by a disciplinary proceeding: whether the conduct demonstrates such unfitness to teach as to warrant terminating the teacher's employment. [FN13]*221

> FN13 Still other subdivisions of section 44944 tend to confirm the discretionary role of a commission. Subdivision (a) subjects proceedings before a commission to the provisions of the Administrative Procedure Act (Gov. Code, § 11500 et seq.), with minor exclusions and modifications not relevant to present purposes. Among the provisions so incorporated is Government Code section 11506, subdivision (d), which allows a respondent to file a statement in mitigation even if no defense to the charges is tendered. This permission would be less relevant in commission proceedings if a commission did not retain the power to take mitigating factors into consideration and to determine that, under the *Morrison* criteria, dismissal was not an appropriate penalty even though a particular charge of misconduct was found to be true. Absent such discretion, there would also seem to be less purpose to the requirement that the members of the commission selected by the district and the employee be credentialed teachers with substantial recent experience in the employee's particular field. (§ 44944, subd. (b).)

That a commission must play a discretionary role is also suggested by contrasting the proceedings for the dismissal or suspension of permanent, tenured employees with those now in effect for the dismissal or suspension of probationary, nontenured employees. A probationary employee may be dismissed during the school year for unsatisfactory performance or for cause or, as an alternative to dismissal, may be suspended without pay for a specified period of time. (§ 44948.3, subds. (a), (b).) [FN14] The employee may demand a hearing, as in the case of a permanent employee, but a commission on professional competence is not convened. Instead, the hearing may be conducted by an administrative law judge, who prepares a "recommended decision" for the governing board of the employing school district. (§ 44948.3, subd. (a)(2).) The final decision, however, is that of the district. The commission occupies a position of greater import in proceedings involving a permanent employee, for "[t]he decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board." (§ 44944, subd. (c).) The Legislature was quite able to

specify a procedure placing the final disciplinary decision in the hands of a teacher's employer when it so chose. The significantly different provisions of section 44944 necessarily betoken a greater and a discretionary role for a commission in disciplinary proceedings involving a permanent employee.

> FN14 Section 44948.3 (adopted by Stats. 1983, ch. 498, § 61, p. 2090) applies only to probationary employees whose terms commenced during or after the 1983-1984 fiscal year or who are employed by a school district having an average daily attendance of at least 250 pupils. Other probationary employees have greater rights, commensurate with those accorded permanent employees, as far as disciplinary proceedings during the school year are concerned (see §§ 44932, subd. (b), 44948), but are subject to procedures similar to those specified in section 44948.3 in challenging a denial of reemployment for the succeeding school year. (See § 44948.5.)

Given the structure of the proceedings and, in particular, the words of the statute and the need to measure conduct against the criteria specified in *Morrison, supra*, 1 Cal.3d 214, we conclude the Legislature intended more of a commission on professional competence than a simple determination whether cause exists for disciplinary action, resulting inexorably in the imposition of the sanction previously selected by the employing school district. We avoid surplusage, give effect to each portion of the statute and harmonize each part of the entire statutory scheme by recognizing that the commission retains discretion to choose between the options given it by statute. *222

This interpretation of the statute works no great infringement on the ability of school districts to govern their affairs and to control the conduct of their permanent employees. The same conduct, in the judgment of the employing district, may constitute grounds for suspending or for dismissing a permanent employee, and nothing in the statutory scheme limits the ability of a district to pursue alternative sanctions, either simultaneously (cf. *Von Durjais v. Board of Trustees* (1978) 83 Cal.App.3d 681, 686-687 [148 Cal.Rptr. 192]; *Board of Education v. Commission on Professional Competence (Smyth)* (1976) 61 Cal.App.3d 664, 670 [132 Cal.Rptr. 516]) or, as principles of double jeopardy do not bar successive administrative proceedings to revoke a license (see *Kendall v. Bd. of Osteopathic Examiners* (1951) 105 Cal.App.2d 239, 248-249 [233 P.2d 107]; cf. *Rinaldo v. Board of Medical Examiners* (1932) 123 Cal.App. 712, 716 [12 P.2d 32]), in succession. [FN15]

> FN15 Although generally "no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice" (§ 44944, subd. (a)), this limitation seems to be more of a bar against the use of stale information to buttress a current charge than a true statute of limitations restricting a district's options. To the extent that it might be taken as an explicit statute of limitations, it would seem inapplicable to a successive application based upon the same charge of misconduct and differing only as to the proposed discipline.
>
> Limitations questions in administrative matters are properly evaluated under rules similar to those employed in judicial proceedings. (See 2 Cal.Jur.3d, Administrative Law, § 144, p. 366.) Given that the identical conduct would be at issue in the two proceedings and that the employee would have received timely notice of the charges, could complain of no prejudice in gathering evidence and could ordinarily point to no bad faith or unreasonable conduct on the part of the employing district, the doctrine of equitable tolling would generally

preserve a district's right to proceed in this fashion. (See *Addison v. State of California* (1978) 21 Cal.3d 313, 319 [146 Cal.Rptr. 224, 578 P.2d 941].) Complaints of stale claims would be more appropriately subject to a laches analysis than a strict statute of limitations bar. (Cf. *Gore v. Board of Medical Quality Assurance* (1980) 110 Cal.App.3d 184 [167 Cal.Rptr. 881].)

We conclude that a commission on professional competence is empowered to exercise its collective wisdom and discretion to determine that dismissal is not appropriate in a given case. The statutes do not preclude a district from preserving its options by seeking alternative sanctions simultaneously or successively, and no other reading of the statutes is capable of fully implementing the balance struck by the Legislature between the discretion given districts to select the degree of discipline and limit the options available to the commission, and the protection from arbitrary action accorded their permanent employees. [FN16]*223

FN16 By recognizing that alternative sanctions may be sought either simultaneously or successively, at a district's option, we harmonize the discretion accorded school districts to select the appropriate degree of discipline and that given a commission on professional competence. Were a school district limited to a single disciplinary proceeding, practical considerations might lead it to charge in the alternative in many, if not most, cases, for to seek an employee's dismissal alone might lead to no discipline being imposed and a district might deem suspension of the employee preferable to that outcome. But to charge in the alternative in every case would vest the commission with the power to opt for suspension in each case - a result that is at odds with the legislative limitations on the options available to a commission. The availablility of successive proceedings allays these concerns.

Nor need we fear that the authority to institute successive proceedings would be invoked routinely to the prejudice of district employees guilty of only minor misconduct. If a district opted to seek first only the dismissal of an employee and its attempt was not sustained by a commission, it would be required to pay the costs of the hearing and the employee's attorney fees (§ 44944, subd. (e)), and the imposition of any lesser discipline would be delayed. Moreover, an employee suspended without pay whose dismissal was then not allowed would be entitled to compensation for lost wages even if some lesser measure of discipline were later permitted. (See *Von Durjais, supra*, 83 Cal.App.3d at p. 687.) These potential costs, and the simple inefficiency of moving separately rather than in a single proceeding, should suffice to limit exercise of the authority to cases in which a district held an abiding belief that no discipline less than dismissal was warranted, while at the same time preserving the district's ability to ensure that it could seek the imposition of some discipline if the commission disagreed with the initial judgment on the appropriate degree of discipline and if the district determined that a successive proceeding was warranted.

2. *Commission as Indispensable Party*

(5) As we reverse the Court of Appeal on the question of commission discretion, we need not, strictly speaking, address Burman's contention that her demurrer to the district's mandamus petition should have been granted because the commission was an unjoined, indispensable party. We did not limit our grant of review under California Rules of Court, rule 29.2(b), to the discretion issue, however, and we think it appropriate to speak to the indispensable

party question for the guidance of the bench and bar in future cases, for on this point we agree with the Court of Appeal and find Burman's contentions unpersuasive.

We must acknowledge that Burman's arguments have facial appeal. The district's challenge to the commission's decision was properly brought under Code of Civil Procedure section 1094.5 (*San Dieguito Union High School Dist., supra,* 135 Cal.App.3d at p. 283), and that statute specifies only two possible dispositions of such a petition: "The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. ..." (Code Civ. Proc., § 1094.5, subd. (f).) Burman accordingly contends only the commission could be the subject of a judgment ordering it as respondent to set aside its decision (see *State of California v. Superior Court* (1974) 12 Cal.3d 237, 255 [115 Cal.Rptr. 524 P.2d 1281] [only the California Coastal Commission and its members could be proper subjects of petition for writ of administrative mandamus]) and asserts that the district's petition should have been dismissed because the statute of limitations specified in Government Code section 11523 expired without the joinder of the commission as an indispensable party. (See *Kupka v. Board of Administration* (1981) 122 Cal.App.3d 791, 794-795 [176 Cal.Rptr. 214]; *Sierra Club, Inc.* v. *California Coastal Com.* (1979) 95 Cal.App.3d 495, 502 [157 Cal.Rptr. 190].)***224**

Facial appeal is all Burman's arguments have, however, for she overlooks the unusual nature of a commission on professional competence. It is not a standing body; it is an ad hoc group more akin to an arbitration tribunal, two of whose members are named by the parties to the dispute. (§ 44944, subd. (b).) It is a nominal, transitory body whose residence is immaterial for venue purposes in an administrative mandamus proceeding. (*Sutter Union High School Dist. v. Superior Court* (1983) 140 Cal.App.3d 795, 798 [190 Cal.Rptr. 182].) Its decision, once made, becomes the decision of the employing school district (§ 44944, subd. (c)), and the commission serves no identifiable function in the remainder of the review process. (Cf. *Compton v. Board of Trustees* (1975) 49 Cal.App.3d 150, 157-158 [122 Cal.Rptr. 493].) It is a different type of entity than the usual respondent named in a mandamus matter, and although it may be - and usually is - named in proceedings for review of a decision made under section 44944, it is not an indispensable party whose absence is fatal to the court's jurisdiction.

Although Code of Civil Procedure section 1094.5, subdivision (f) generally prescribes that an administrative mandamus proceeding be disposed of by denial of the writ or a direction to a named respondent to set aside its decision, that section comes into play in commission matters only by application of Government Code section 11523, which specifies that judicial review may be had "by filing a petition for writ of mandate in accordance with the provisions of the Code of Civil Procedure, *subject, however, to the statutes relating to the particular agency.*" (Italics supplied.) The "statutes relating to the [commission]" include section 44944, subdivision (e), which provides for the allocation of costs if the commission's decision "is finally reversed or vacated" by the reviewing court. The statutes thus recognize the power of a court to directly set aside the order of the commission. As the commission therefore need not be before the court to enable the court to accord complete relief between the employing school district and the employee, it is not an indispensable party within the meaning of Code of Civil Procedure section 389, subdivision (a), and Burman's demurrer was properly overruled. [FN17]

> FN17 Moreover, under section 44944, subdivision (c), the decision of the commission becomes "the final decision of the governing board." In effect then, a strict application of the statutes relied on by Burman would require a district to bring an action against itself to set aside its own order. "Statutes are to be given a reasonable

and commonsense interpretation consistent with the apparent legislative purpose and intent 'and which, when applied, will result in wise policy rather than mischief or absurdity.' [Citation.]" (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1392 [241 Cal.Rptr. 67, 743 P.2d 1323].) We decline to construe the statutes as Burman urges.

3. *Award of Attorney Fees*

Finally, Burman contends the trial court erred in awarding her but $1,500 in costs and attorney fees. She requests that we remand the matter to *225 permit her to demonstrate the greater amount of costs and fees actually incurred. The Court of Appeal had no occasion to address this question in view of its decision on the merits. The point is properly before us, and we will do as Burman requests.

(6) Section 44944, subdivision (e) specifies that "[i]f the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including ... reasonable attorney fees incurred by the employee." Although the statute does not expressly provide for the award of fees if judicial review of a commission decision is sought, fees should be awarded to a prevailing employee for any such review proceedings as well (*Russell v. Thermalito Union School Dist.* (1981) 115 Cal.App.3d 880, 884 [176 Cal.Rptr. 1]; *Board of Education* v. *Commission on Professional Competence* (*Lujan*) (1980) 102 Cal.App.3d 555, 562-563 [162 Cal.Rptr. 590]), and costs should be awarded under the general provisions of the Code of Civil Procedure. (Code Civ. Proc., § 1032, subd. (b) ["Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding."].)

It appears that the trial court in this case may have awarded Burman $1,500 in costs and attorney fees in the mistaken belief that Government Code section 800 precluded it from awarding a greater amount. That section reads, in pertinent part: "In any civil action to ... review the ... determination of any administrative proceeding ... where it is shown that the ... determination of such proceeding was the result of arbitrary or capricious action ... the complainant if he prevails in the civil action may collect reasonable attorney's fees, but not to exceed one thousand five hundred dollars. ..." Because section 44944, subdivision (e) expressly provides for the award of fees in permanent employee dismissal proceedings, however, its provisions, imposing no limitation, should govern. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 21 [206 Cal.Rptr. 303].)

As we cannot tell whether the trial court based its award on an implicit finding that $1,500 was a reasonable fee or whether it erroneously believed that no more than that sum could be awarded, we conclude that Burman's request for a remand on this point should be granted. On remand, she is entitled to request reasonable fees for all trial and appellate proceedings. [FN18](*Ibid.*)*226

FN18 In the Court of Appeal, the district contended that no remand on the attorney fee question was warranted because Burman had failed to provide the trial court with any information showing that she incurred a greater amount of fees. Given that section 44944, subdivision (e) specifies no procedure for claiming fees, it would have been appropriate for Burman to file such a memorandum after judgment was entered. (See Code Civ. Proc., § 1033.5, subd. (a)(10); Cal. Rules of Court, rule 870(a)(1).) The trial court, however, made its award of $1,500 in fees without affording Burman the opportunity to file such a memorandum. As the district has not raised any issue before us on the attorney fee question, we need not decide the appropriate procedure, nor need we discuss at

this time Burman's avowed intention to seek enhancement of any fee award under a "lodestar" theory. (See *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76-77 [227 Cal.Rptr. 804].)

Conclusion

We recognize that cogent arguments were made on both sides of this case. On the one hand, the statutory scheme contemplates the exercise of discretion by a commission on professional competence and the rendition of judgments on the propriety of dismissing an employee found guilty of misconduct. On the other hand, we have a clear legislative intent to limit the authority of a commission to dispose of dismissal charges by suspension.

On balance, we believe Education Code section 44944 is best read to vest discretion in a commission on professional competence not to dismiss an employee even though a cause for discipline is found to exist. Our interpretation recognizes the discretion initially conferred on an employing school district to determine whether to charge an employee and what charges to pursue, but confirms the commission's role as the professional body charged with determining the appropriateness of a given sanction. We reject Burman's contention that the commission is an indispensable party in proceedings of this nature and remand the attorney fee question to the trial court for further proceedings consistent with this opinion.

The judgment of the Court of Appeal is reversed. The Court of Appeal is directed to enter judgment affirming the trial court in part and reversing in part and directing it to enter judgment denying the petition for a writ of mandate and to award Burman reasonable costs and attorney fees in accordance with this opinion.

Lucas, C. J., Mosk, J., Broussard, J., Panelli, J., Eagleson, J., and Spencer (Vaino H.), J., [FN*] concurred. *227

FN* Presiding Justice, Court of Appeal, Second Appellate District, Division One, assigned by the Chairperson of the Judicial Council.

Cal.
Fontana Unified School Dist. v. Burman
45 Cal.3d 208, 753 P.2d 689, 246 Cal.Rptr. 733, 46 Ed. Law Rep. 781

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509 F.3d 25
509 F.3d 25, 228 Ed. Law Rep. 23
(Cite as: 509 F.3d 25)

H

United States Court of Appeals, First Circuit.
Christopher HAVLIK, Plaintiff, Appellant,
v.
JOHNSON & WALES UNIVERSITY, Defendant, Appellee.
No. 07-1879.

Heard Nov. 6, 2007.
Decided Dec. 5, 2007.

Background: Student who was dismissed from university brought action against university, alleging defamation and breach of contract. The United States District Court for the District of Rhode Island, Mary M. Lisi, J., 490 F.Supp.2d 250, granted summary judgment in favor of university, and student appealed.

Holdings: The Court of Appeals, Selya, Senior Circuit Judge, held that:
(1) university reasonably believed it had legal duty to issue crime alert regarding student's assault of another student, for purposes of qualified privilege under Rhode Island law from liability for defamation;
(2) student failed to establish that primary motivating factor for university's issuance of crime alert was malice; and
(3) university's handling of student's appeal of his dismissal did not breach implied covenant of good faith and fair dealing contained in contract with student under Rhode Island law.

Affirmed.

West Headnotes

[1] Libel and Slander 237 ⇐41

237 Libel and Slander
237II Privileged Communications, and Malice Therein
237k40 Qualified Privilege
237k41 k. In General. Most Cited Cases
Under Rhode Island defamation law, a qualified privilege attaches if the publisher acting in good faith correctly or reasonably believes that he has a legal, moral or social duty to speak out, or that to speak out is necessary to protect either his own interests, or those of third persons, or certain interests of the public.

[2] Libel and Slander 237 ⇐43

237 Libel and Slander
237II Privileged Communications, and Malice Therein
237k40 Qualified Privilege
237k43 k. Discharge of Duty to Public. Most Cited Cases
University counsel reasonably believed location of student's assault on another student brought incident within university's duty under Clery Act provision requiring universities accepting federal funding to make reports to campus community on certain crimes considered to be a threat to students and employees, and thus, university's issuance of crime alert was covered by qualified privilege under Rhode Island law from liability for defamation based on reasonable belief that publisher had legal duty to speak out; there was no showing university thought incident occurred outside Act's geographic purview, and while counsel stated she was not concerned with specific address of incident, she considered its location and concluded it had taken place in vicinity of campus and in area frequented by students. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, § 485(f), 20 U.S.C.A. § 1092(f).

[3] Libel and Slander 237 ⇐51(4)

237 Libel and Slander
237II Privileged Communications, and Malice Therein
237k51 Existence and Effect of Malice
237k51(4) k. Discharge of Duty to Others

or to Public and Common Interest in Subject-Matter. Most Cited Cases
University student who assaulted another student failed to establish that university's primary motivating factor in issuing crime alert notifying campus community of assault was malice, so as to overcome university's privilege from liability for defamation based on reasonable belief that it had legal duty to publish alert under Clery Act provision requiring universities accepting federal funding to report to campus community on crimes considered a threat to students and employees; university counsel who decided to include student's name and fraternity affiliation in alert believed information would be useful to community and would help prevent future incidents, and meeting at which university vice president accused student of lying and called members of his fraternity thugs took place after alert was issued.

[4] Libel and Slander 237 ⇐50.5

237 Libel and Slander
237II Privileged Communications, and Malice Therein
237k50.5 k. Exceeding Privilege or Right. Most Cited Cases

Libel and Slander 237 ⇐51(1)

237 Libel and Slander
237II Privileged Communications, and Malice Therein
237k51 Existence and Effect of Malice
237k51(1) k. In General. Most Cited Cases
In Rhode Island, a qualified privilege in a defamation case may be abrogated if the plaintiff proves that the privilege-holder published the offending statement out of spite, ill will, or malice.

[5] Colleges and Universities 81 ⇐9.30(7)

81 Colleges and Universities
81k9 Students
81k9.30 Regulation of Conduct in General
81k9.30(4) Expulsion, Suspension, or Other Discipline
81k9.30(7) k. Proceedings and Review. Most Cited Cases
University's handling of student's appeal of student conduct review panel decision dismissing student from university for assaulting another student did not breach implied covenant of good faith and fair dealing contained in its contract with student under Rhode Island law; although appeal officer who was deciding student's appeal asked university vice president who had met with student if he saw any reason student should not be dismissed, and vice president said he did not, there was no showing that vice president told appeal officer of his negative sentiments about student.

*26 John R. Mahoney, with whom Asquith & Mahoney, LLP was on brief, for appellant.
*27 Paul V. Curcio, with whom John A. Tarantino, Katy A. Hynes, and Adler Pollock & Sheehan P.C. were on brief, for appellee.

Before BOUDIN, Chief Judge, SELYA and STAHL, Senior Circuit Judges.

SELYA, Senior Circuit Judge.
The Clery Act, 20 U.S.C. § 1092(f) (the Act), requires colleges and universities that participate in federal financial aid programs to notify their constituent communities of certain reported crimes. This case requires us to construe, for the first time at the federal appellate level, the Act's notification requirements. After analyzing the language and purpose of the Act, charting the dimensions of the plaintiff's claims, and sifting through the factual record, we affirm the district court's entry of summary judgment in favor of the defendant university.

I. BACKGROUND

The plaintiff, Christopher Havlik, is a citizen and resident of New York. In 2002, he enrolled as an undergraduate at Johnson & Wales University (the University) in Providence, Rhode Island. The

events that led to this litigation occurred early in his junior year.

In the late night or wee morning hours of September 16-17, 2004, the plaintiff engaged in a heated exchange with another student, Donald Ratcliffe, on a sidewalk near the intersection of Richmond and Pine Streets in Providence. In the course of this encounter, the plaintiff punched Ratcliffe, knocking him to the ground. As a result, Ratcliffe hit his head on the sidewalk.

The Providence police responded and investigated the incident. Acquaintances of each protagonist had witnessed the fracas and gave somewhat differing accounts of what had transpired. One witness told the police that the plaintiff was holding a knife at the time of the confrontation.

The police arranged for Ratcliffe to be taken by ambulance to a local hospital, where he was found to have sustained a concussion and a fractured skull. Then, after concluding their probe, the police lodged a criminal charge against the plaintiff.

The incident was duly reported to the University's campus safety and security office. That office commenced its own inquiry. This inquiry culminated in an incident report, which indicated that the episode probably had been triggered by fraternity-related animosities; that the plaintiff was the likely aggressor; and that he reputedly flashed a knife at the time. At least one witness stated that he and a friend (also a witness) feared that the plaintiff or his fraternity brothers would retaliate against them for cooperating in the investigation.

On September 20, the University's student conduct office notified the plaintiff of his temporary suspension for violating rules contained in the student code of conduct (the Code). The notice cited three violations: assaulting another student, possessing a knife, and engaging in criminal behavior. The notice advised the plaintiff that he had a right to a hearing and scheduled one for the following day.

The hearing went forward the next morning before the student conduct board (the Board). The plaintiff explained his actions and presented witnesses who testified on his behalf. Other evidence also was adduced. After mulling all the proof, the Board found the plaintiff "responsible" for assaulting another student and for engaging in lawless behavior (the first and third charges). It found him "not responsible" for possessing a knife (the second *28 charge). The Board then recommended that the plaintiff be dismissed from the University for having transgressed the Code and notified him of his right to appeal its decision.

During the course of these proceedings, other (related) events were occurring on a parallel track. On the same day that the plaintiff received notice of his suspension, the University's chief in-house counsel, Barbara Bennett, reviewed and revised a draft of a "crime alert" that she had received that day from the campus safety and security office. The crime alert was, in effect, a notice designed to inform the University community of a reported crime.

While both versions of the crime alert included statements that a blow had been struck and a knife had been brandished, Bennett's version contained two facts not included in the original draft. First, it noted that members of a particular fraternity (ZBT), whose enrollment included the plaintiff, were involved in the incident. Second, it named the plaintiff as the party reportedly responsible for the crime.

When her work was finished, Bennett sent the final version of the crime alert back to the campus safety and security office. Personnel from that office posted it in various locations some time after 4:00 pm on September 21. The record indicates that, at the relevant times, neither Bennett nor the campus safety and security office had any knowledge of the outcome of the disciplinary hearing before the Board.

The plaintiff decided to appeal the Board's decision, as was his right. Prior to going forward with his ap-

peal, he and his mother conferred with Ronald Martel, the University's vice-president for student affairs. At the meeting, Martel accused the plaintiff of dissembling about the incident and called his fraternity brothers "thugs." The plaintiff nonetheless persisted in his appeal and Martel (to whom the letter of appeal was sent) turned the matter over to the designated appeal officer, Veera Sarawgi (also a vice-president of the University).

Although Sarawgi was not deposed, she would in the normal course of events have received, along with the letter of appeal, the hearing notification, a statement of applicable hearing procedures, the Board's decision, and the University's incident report.[FN1] Sarawgi also asked Martel whether he knew of any reason that the Board's proposed sanction should be tempered or overturned. Martel replied in the negative. Nothing in the record indicates that he shared his views about either ZBT or the plaintiff's veracity with Sarawgi. On September 29, Sarawgi affirmed the plaintiff's dismissal.

> FN1. In his deposition, Martel listed these materials as the standard contents of the file given an appeal officer. At any rate, no issue is raised in this appeal as to the nature of the documents transmitted to Sarawgi.

During and after this time frame, a criminal prosecution was being mounted. The Providence police had charged the plaintiff with criminal assault. *See*R.I. Gen. Laws § 11-5-3. The case originally was heard in the state district court and the plaintiff was found guilty after a bench trial. He appealed to the superior court and claimed his right to a de novo jury trial. *See id.* § 12-17-1. In May of 2005, a jury acquitted him.

Disgruntled by the disruption of his scholarly pursuits, the plaintiff filed a civil action against the University in Rhode Island's federal district court. He premised jurisdiction on diversity of citizenship and the existence of a controversy in the requisite amount. *See*28 U.S.C. § 1332(a). ***29** His complaint alleged defamatory publication of false information by means of the crime alert and breach of contract for the University's failure to provide a fair appeal process. The University denied the material allegations of the complaint and, after the close of discovery, moved for summary judgment. The district court granted the motion. *Havlik v. Johnson & Wales Univ.*, 490 F.Supp.2d 250, 262 (D.R.I.2007). This timely appeal followed.

II. ANALYSIS

We review a district court's entry of summary judgment de novo. *Iverson v. City of Boston*, 452 F.3d 94, 98 (1st Cir.2006). In conducting that tamisage, we must sift the evidence and evaluate it in the light most congenial to the nonmovant (here, the plaintiff). *Id.* By the same token, we draw all reasonable inferences from the facts in the nonmovant's favor. *Id.* We caution, however, that this decisional calculus need not take into account "bald assertions, unsupported conclusions, or optimistic surmises." *Bennett v. Saint-Gobain Corp.*, 507 F.3d 23, 30 (1st Cir.2007). When all is said and done, we will affirm the summary judgment order only if the record, scrutinized in the foregoing manner, reveals no genuine issue of material fact and verifies that the movant (here, the University) is entitled to judgment as a matter of law. *See*Fed.R.Civ.P. 56(c).

A. *The Clery Act.*

To put the relevance of the Clery Act into perspective, we deem it useful to begin by delineating the anatomy of the plaintiff's defamation claim. Defamation is a common law cause of action that arises under state law (here, the law of Rhode Island-the place of publication).

In Rhode Island, defamation requires proof that (i) the defendant made a false and defamatory statement regarding another, (ii) published it to a third party without an attendant privilege and (iii) was at least negligent in making the publication, with the

result that (iv) the defamed party incurred harm. *Kevorkian v. Glass*, 913 A.2d 1043, 1047 (R.I.2007). Consistent with this formulation, the defendant may avoid liability by showing that the publication enjoys a qualified privilege. *See Mills v. C.H.I.L.D., Inc.*, 837 A.2d 714, 720 (R.I.2003).

In this instance, the district court assumed for argument's sake that the crime alert was defamatory. *Havlik*, 490 F.Supp.2d at 255. It determined, however, that the University enjoyed a qualified privilege, stemming from its duty under the Act, to publish the crime alert. *Id.* at 258. The court further determined that, in issuing the crime alert, the University acted without ill will or malice, so that the qualified privilege protected it from liability. *Id.* at 260.

The plaintiff advances three primary claims of error with respect to this multi-part determination. In addressing them sequentially, we assume arguendo, as did the district court, that the crime alert contained defamatory statements.

[1] **1.** ***The Qualified Privilege.*** Under Rhode Island law, a qualified privilege attaches if "the publisher acting in good faith correctly or reasonably believes that he has a legal, moral or social duty to speak out, or that to speak out is necessary to protect either his own interests, or those of third persons, or certain interests of the public." *Ponticelli v. Mine Safety Appl. Co.*, 104 R.I. 549, 247 A.2d 303, 305-06 (1968). Thus, the privilege may apply when the speaker's perception of his duty to speak, though incorrect, is nonetheless reasonable. *See id.*

[2] With this legal landscape in mind, the plaintiff argues that the University had *30 no duty under the Act to report his involvement in the putative crime to the campus community and that, therefore, it had no qualified privilege to publish the crime alert. The University demurs, insisting that it had a legal duty to report the putative crime and set out the known particulars. On that basis, it defends the district court's holding that a qualified privilege obtained.

To determine whether the University enjoyed a qualified privilege, we must first determine whether its professed belief in its legal duty was reasonable. This brings us to the **Clery Act**,[FN2] so a brief exposition of the Act's provisions and legislative purpose is in order.

> FN2. In its original incarnation, the **Act** was given the short title "Crime Awareness and Campus Security **Act** of 1990." Congress amended the **Act** in 1998 and renamed it the " **Jeanne Clery** Disclosure of Campus Security Policy and Campus Crime Statistics **Act**."Most commentators now use the shorthand "the **Clery Act**," and so do we.

The **Clery Act** mandates that all colleges and universities that accept federal funding must notify the constituent campus communities-students, faculty, employees, and the like-when certain crimes are brought to their attention. Specifically, the **Act** requires every covered entity to make "timely reports to the campus community on [certain] crimes considered to be a threat to other students and employees ... that are reported to campus security or local law police agencies." 20 U.S.C. § 1092(f)(3).

The Act has both qualitative and situational limitations. As to the former, the Act does not reach all types of crimes but only encompasses murder, manslaughter, aggravated assault, sex offenses, robbery, burglary, motor vehicle theft, arson, liquor, drug, and weapons offenses, and hate crimes. *Id.* § 1092(f)(1)(F)(i)-(ii). An aggravated assault is a covered crime, and in this venue the plaintiff does not contest that his confrontation with Ratcliffe qualifies under that rubric. *See* Appellant's Br. at 14-15.

Paragraph (1)(F) of the **Act** contains the relevant situational limitations. It describes the loci of crimes that must be reported. *See*20 U.S.C. § 1092(f)(1)(F). That paragraph speaks of crimes that occur "on campus, in or on noncampus buildings or property, and on public property...."*Id.*The

Act then proceeds to define each of these terms. "[N]oncampus building[s] or property" are those owned or controlled by the institution that are outside the "reasonably contiguous geographic area of the institution,"*id.* § 1092(f)(6)(A)(ii); "public property" is non-owned property within the area reasonably contiguous to the institution and adjacent to a facility owned or controlled by the institution, *id.* § 1092(f)(6)(A)(iii).

The goal of the notification requirement is to protect members of the constituent campus communities by "aid[ing] in the prevention of similar occurrences." *Id.* § 1092(f)(3). The Act's history illuminates the centrality of this goal. Congress passed the original version of the Act in 1990 amid concerns that the proliferation of campus crime created a growing threat to students, faculty, and school employees. *See*H.R.Rep. No. 101-518, at 7 (1990), *reprinted in* 1990 U.S.C.C.A.N. 3363, 3369. Congress recognized that contemporary campus communities had become increasingly dangerous places. *Id.* Furthermore, it noted that, in roughly eighty percent of crimes on campus, both the perpetrator and the victim were students. *See* Crime Awareness and Campus Security Act of 1990, Pub.L. No. 101-542, § 202, 104 Stat. 2381, 2384 (codified as amended at 20 U.S.C. § 1092(f)).

*31 Notwithstanding these concerns, the first iteration of the Act restricted the reporting requirement to crimes committed on campus. *See*20 U.S.C. §§ 1092(f)(1)(F) & (f)(3) (1990); *see also*H.R.Rep. No. 101-518, at 8, *reprinted in* 1990 U.S.C.C.A.N. at 3371 (disclaiming any intention "that institutions report ... offenses which occur outside of the campus"). Over time, however, Congress became dissatisfied with this restriction. In 1996, the House of Representatives expressed its displeasure with current enforcement efforts and passed a resolution calling for the Department of Education to make "[s]afety of students ... the number one priority." H.R. Rep. No. 104-875 (1997), *reprinted in* 1997 WL 10633, at *61 (citing H.R. Res. 470, 104th Cong. (1996)).

Two years later, Congress amended the Act to provide broader protections. Through the Higher Education Amendments of 1998, Congress expanded the Act's coverage to reach not only crimes committed on campus but also crimes committed on "noncampus" and "public" property, so long as (i) the property on which a crime occurs is owned or controlled by, or adjacent to a facility owned or controlled by, the institution, and (ii) that property or facility is used by the institution in direct support of, or in a way related to, its educational mission. Higher Education Amendments of 1998, Pub.L. No. 105-244, 112 Stat. 1581, 1744 (codified as amended at 20 U.S.C. § 1092(f)(6)(A)).

From the start, Congress made manifest a desire that educational institutions retain the ability to tailor security procedures to particularized needs. *See, e.g.,*H.R.Rep. No. 101-518, at 9, *reprinted in* 1990 U.S.C.C.A.N. at 3371 (stating that the legislation was designed "to encourage campuses to develop campus security policies and procedures which are appropriate to the unique conditions of [each particular] campus"). The 1998 amendments did not retreat from this aspiration. *See, e.g.,*20 U.S.C. § 1092(f)(2) (declining "to authorize the Secretary [of Education] to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security"). As we read the Act, it vests substantial discretion in each campus security office to phrase and disseminate reports in those ways that the particular institution deems best suited to apprise its constituent campus communities of incipient criminal activity.

In this case, the district court determined that the locus of the incident fell under the Act's definition of "public property." *Havlik,* 490 F.Supp.2d at 257; *see*20 U.S.C. § 1092(f)(6)(A)(iii) (defining "public property" as "all property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk ... and is adjacent to a facility owned or controlled by the institution" so long as "the facility is used by the institution in dir-

ect support of, or in a manner related to the institution's educational purposes"). On appeal, the plaintiff remonstrates that the University was not careful enough in gauging the location of the incident. Building on this foundation, he engages in an exegetic discourse about the meaning of terms such as "campus," "noncampus," and "public property," culminating in an assertion that the locus of the incident falls outside the compass of those definitions (and, thus, outside the compass of the Act).

We do not doubt the importance of the meaning that Congress assigned to each of these terms. Nevertheless, we reject the notion that the coverage of the Act turns exclusively on the use of a surveyor's theodolite. Reasonableness is the beacon by which institutions must steer, and reasonableness is not totally constrained by *32 mathematically precise metes and bounds. So, too, common sense must inform a court's assessment of the reasonableness of a university's belief that the reporting of a crime is compulsory under the Act. And in making that assessment, the need to assure safety and security for campus communities counsels that doubts should be resolved in favor of notification.

In the case at hand, Bennett-the official who authored the final version of this crime alert-testified without contradiction that when advising school hierarchs whether a duty to publish a timely notification exists, she first determines whether the crime is of a type covered by the Act; she then determines whether it has been reported to campus security or local law enforcement; and she then determines whether the underlying conduct signals a threat to the University community (a determination that takes into account where the incident happened). She believed that all of these factors supported notification in this instance.

Nothing in the record undermines the reasonableness of Bennett's professed belief that the University had a responsibility under the Act to issue a timely notification about the incident. There is absolutely no evidence that the University thought that the incident had occurred outside the geographic purview of the Act. Moreover, while Bennett stated that she was not concerned with the specific street address at which the brouhaha erupted, she did consider the location of the crime to the extent of satisfying herself that it had taken place "in the vicinity of [the] campus and [in] an area that [the University's] students were known to frequent."

No more was exigible: school officials must act expeditiously to satisfy their responsibilities under the Clery Act, and a reasonable belief-even if later shown to be incorrect in some particular-is all that is required for the qualified privilege to attach.

That ends this phase of our inquiry. Because Bennett's belief that the University had a duty to report the crime was reasonable,[FN3] that belief sufficed to place publication of the crime within the ambit of the qualified privilege conferred by the Act.

> FN3. In all events, Bennett's belief was quite probably correct. The plaintiff argues that the sidewalk where the fracas occurred did not constitute "public property" within the purview of the Act because it is adjacent to a parking lot owned by a third party. This argument overlooks, however, that the University presented uncontradicted evidence showing that this parking lot was owned by one of its subsidiary corporations, that it (the University) maintained the parking lot, and that the lot was used, at least in part, for employee and student parking and similar activities related to the University's educational mission. Because the only plausible conclusion that can be drawn from this undisputed evidence is that the University controlled the parking lot, the sidewalk adjacent to it was public property within the purview of the Act. *See*20 U.S.C. § 1092(f)(6)(A)(iii).

[3] **2.** ***The University's Primary Motive.*** The plaintiff next argues that even if the Act applies, the district court erred in upholding the qualified privilege because he adduced sufficient evidence to

make out a genuine issue of material fact as to whether that privilege was vitiated. Once again, we begin with a brief overview of the background legal rules.

[4] A qualified privilege is not a jujube that, like some magical charm, wards off liability for defamation, come what may. In Rhode Island, as elsewhere, such a privilege may be abrogated if the plaintiff proves that the privilege-holder published the offending statement out of spite, ill will, or malice. *See Kevorkian,* 913 A.2d at 1048; *Mills,* 837 A.2d at 720. To carry *33 this burden, the plaintiff must show that malice-we use that word as a generic shorthand that includes ill will and spite-comprised the defendant's primary motive in publishing the statement. *Mills,* 837 A.2d at 720. To accomplish this goal, the plaintiff cannot rest on naked assertions or bare conclusions but, rather, must proffer facts sufficient to support a finding of malice as a primary motive. *See Kevorkian,* 913 A.2d at 1049 (explaining that "to overcome a motion for summary judgment based on a qualified privilege, a plaintiff must point to *some* specific facts in the record that raise a genuine issue" as to the existence of malice).

Here, the plaintiff argues that summary judgment was improvident because the University's use of his name and fraternity affiliation in the crime alert and Martel's negative statements about him and his fraternity were sufficient to support an inference of malice. He adds that the statement in the crime alert about his possession of a knife buttresses this inference, given the Board's finding, hours before the crime alert issued, that he was "not responsible" on the knife-wielding charge. We do not agree.

At the outset, it is important to note that every university is different, and each one has its own culture. Mindful of this diversity, the Act stipulates no hard-and-fast rules but, instead, gives institutions of higher learning substantial leeway to decide how notices should be phrased and disseminated so as most effectively to prevent future incidents. *See, e.g.,* 20 U.S.C. § 1092(f)(3) (directing colleges and universities to make timely reports "in *a manner...* that will aid in the prevention of similar occurrences" (emphasis supplied)); *see also* H.R.Rep. No. 101-518, at 8, *reprinted in* 1990 U.S.C.C.A.N. at 3371 (explaining that reports should be constructed to permit students "to better protect themselves"). Given this mise-en-scène, the plaintiff has proffered nothing that might suffice to show malice in the composition of the crime alert.

The record shows that Bennett, who made the decision to include the plaintiff's name and fraternity affiliation in the text of the crime alert, believed that the information would be useful to the campus community and would assist in preventing future incidents. Bennett testified that she thought the plaintiff represented a threat to others on campus both because his fraternity had been involved in past misbehavior-she knew of at least one previously reported incident-and because the campus safety and security office had been told that witnesses feared retaliation at the hands of ZBT. On this record, Bennett's belief, whether or not unarguably correct, was clearly reasonable and, thus, inspires no inference of malice.

In pursuing this line of attack, the plaintiff makes much of Martel's deposition testimony that, during his two-year tenure, there were approximately five other crime alerts that involved students allegedly responsible for crimes that did not name the alleged perpetrator. In her deposition, however, Bennett explained that in all but one of those cases the student's identity was not known until after publication of the crime alert. On at least one other occasion, a student perpetrator's name was mentioned in a crime alert. She further explained that, in this instance, she chose to use the plaintiff's name because "we knew his identity."

That explanation seems sufficient, especially in view of three related facts. First, the crime alert as a whole appears consistent with the general tenor of the incident report and the police report. Second, there is no hint that Bennett even knew the plaintiff, let alone that she harbored any animus toward him.

Last-but surely *34 not least-the crime alert appears reasonably calculated to help prevent similar incidents. A finding of malice would, therefore, be totally at odds with the record.

To be sure, Martel-who accused the plaintiff of prevarication and called his fraternity brothers "thugs"-arguably may have harbored some hostility toward the plaintiff. The plaintiff insists that this ill will should be imputed to the University. But Martel's statements were made *after* the publication of the crime alert, and there is simply no evidence that Martel played any part in the preparation of that document. The motives of an employee who has no connection to a publication decision cannot be imputed to the institution for which he works and, thus, cannot defenestrate the institution's qualified privilege. *See Boston Mut. Life Ins. Co. v. Varone,* 303 F.2d 155, 159 (1st Cir.1962) (stating that ill will of a nondecisionmaker is "immaterial" to privilege).

This leaves the fact that the Board found the plaintiff not responsible for possessing a knife a few hours before the University posted the crime alert. As to this item, there is a gap in the plaintiff's proof: the absence of any evidence that the University officials responsible for the publication were aware of the Board's finding at the time of publication. Bennett testified that she had no such knowledge until after publication had occurred, and there is no indication in the record that the campus safety and security office was any better informed. Finally, there is nothing to show that the University willfully blinded itself to the Board's finding. We conclude, therefore, that the inclusion of the "knife" language in the crime alert cannot support an inference of malice.[FN4]

> FN4. If more were needed-and we doubt that it is-the statement contained in the crime alert was literally true: that a witness had reported seeing a knife in the plaintiff's hand. It is hard to see how simply repeating what is stated in a police report about a reportable crime, as was done here, could fall outside the privilege created by the Act.

3. ***Punitive Damages.*** The plaintiff's third assignment of error-that the district court blundered in squelching his quest for punitive damages-need not detain us. In this case, punitive damages are not a separate cause of action but, rather, an element of damages in, and thus wholly derivative of, the plaintiff's defamation claim. *Cf. Chrabaszcz v. Johnston Sch. Comm.,* 474 F.Supp.2d 298, 311 (D.R.I.2007) (recognizing need for proof of causal link between defamatory statements and damages under Rhode Island law). Because the district court appropriately terminated that claim at the summary judgment stage, *see supra* Parts II(A)(1)-(2), the plaintiff has no conceivable basis for an award of punitive damages.

B. *The Contract.*

[5] A student's relationship to his university is based in contract. *Mangla v. Brown Univ.,* 135 F.3d 80, 83 (1st Cir.1998). The plaintiff's final claim of error in this case is that the lower court erred in granting summary judgment in favor of the University on his breach of contract claim.

The relevant terms of the contractual relationship between a student and a university typically include language found in the university's student handbook. *See, e.g., id.* We interpret such contractual terms in accordance with the parties' reasonable expectations, giving those terms the meaning that the university reasonably should expect the student to take from them. *See id.* Thus, if the university explicitly promises an appeal process in disciplinary matters, that process must be carried out in line with the student's reasonable expectations. *See* *35*Cloud v. Trs. of Boston Univ.,* 720 F.2d 721, 724-25 (1st Cir.1983).

In this instance, the contract between the plaintiff and the University is governed by Rhode Island law. *See Mangla,* 135 F.3d at 83. That body of

jurisprudence requires, among other things, that parties to a contract act pursuant to an implied duty of good faith and fair dealing. *See id.* at 84; *Dovenmuehle Mortg., Inc. v. Antonelli*, 790 A.2d 1113, 1115 (R.I.2002). Good faith and fair dealing cannot be separated from context, however-and in evaluating those covenants in the educational milieu, courts must accord a school some measure of deference in matters of discipline. *See Schaer v. Brandeis Univ.*, 432 Mass. 474, 735 N.E.2d 373, 381 (2000) (stating that universities must be given broad discretion in disciplining students); *see also Gorman v. St. Raphael Acad.*, 853 A.2d 28, 34 (R.I.2004) (affording broad discretion to private schools to interpret contracts with students in ways that further the school's legitimate "educational and doctrinal responsibilities"); *cf. Wood v. Strickland*, 420 U.S. 308, 326, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975) ("It is not the role of the federal courts to set aside decisions of [public] school administrators which the court may view as lacking a basis in wisdom or compassion.").

The University prepares and distributes to those who enroll a student handbook. With respect to matters of student conduct, the handbook designates the rudimentary contractual terms between the parties vis-à-vis the appeal process. In pertinent part, it gives a student a right of appeal from the Board's decision anent charges of violating the Code. It specifies the bases on which a student may appeal, including the imposition of an inappropriate sanction.

Once the student submits a letter stating the basis for his appeal, the appeal officer must engage in a "further review of the [Board's] decision." The handbook does not limn the procedures to be followed by the appeal officer, nor does it pair particular types of code violations with particular sanctions. It is likewise silent as to the kinds of materials that an appeal officer may review.

To the extent the handbook's terms are explicit, it is plain that the University complied with them. The plaintiff asseverates, however, that the University breached its implied duty of good faith and fair dealing because the appeal officer (Sarawgi) was improperly influenced by the phraseology of the crime alert and her conversation with Martel.

Given the sketchy nature of the appeal provision in the handbook and the straightforward nature of the materials that were made available to Sarawgi, *see supra* at 28, it seems entirely reasonable for her to have considered that information.[FN5] *Cf. Schaer*, 735 N.E.2d at 380 (holding that plaintiff had no reasonable expectation for judicial proceedings where "nothing in the contract suggests that disciplinary proceedings will be conducted as though they were judicial proceedings"). Her consultation with Martel also seems within the realm of reasonableness. Martel, after all, was the University's vice-president for student affairs.

> FN5. The record is opaque as to whether Sarawgi was given the crime alert. This is of no consequence. If she was, considering it would have been acceptable; if she was not, there is no ground for any complaint.

In any event, the plaintiff's assertions of improper influence fail in light of the uncontested facts. The plaintiff presented no evidence that Martel repeated his negative sentiments to Sarawgi. *See* *36*Bennett*, 507 F.3d at 31 ("[C]onjecture cannot take the place of proof in the summary judgment calcu- lus.").

To say more on this point would be to paint the lily. In the absence of any probative evidence that the appeal officer ignored promised protections, improperly consulted certain proof, acted arbitrarily in carrying out the procedures limned in the handbook, or made her decision in bad faith, there has been no showing that the plaintiff's reasonable expectations were thwarted. It follows that the University was entitled to summary judgment on the breach of contract claim.

III. CONCLUSION

We need go no further. This matter was ably handled in the district court and for the reasons elucidated above, we uphold that court's summary judgment order.

Affirmed.

C.A.1 (R.I.),2007.
Havlik v. Johnson & Wales University
509 F.3d 25, 228 Ed. Law Rep. 23

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2002 FED.APP. 0213P
United States Court of Appeals, Sixth Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.
MIAMI UNIVERSITY; Ohio State University, Defendants-Appellees,
The Chronicle of Higher Education, Intervening Defendant-Appellant.
No. 00-3518.

Argued Aug. 10, 2001.
Decided and Filed June 27, 2002.

United States commenced action, on its own behalf and on behalf of the Department of Education (DOE), alleging that universities violated the Family Educational Rights and Privacy Act (FERPA) by releasing student disciplinary records. Upon intervening newspaper's motion to dismiss and government's motion for summary judgment, the United States District Court for the Southern District of Ohio, 91 F.Supp.2d 1132,George C. Smith, J., permanently enjoined the universities from releasing student disciplinary records or any personally identifiable information contained therein, except as otherwise expressly permitted under the FERPA, and newspaper appealed. The Court of Appeals, Karl S. Forester, Chief District Judge, held that: (1) the United States and DOE had standing to sue for injunctive relief; (2) student disciplinary records are "education records" within the contemplation of FERPA; (3) the district court did not abuse its discretion in denying discovery to newspaper before granting summary judgment and permanent injunction; (4) irreparable harm was shown in absence of injunction; (5) there were no adequate alternative remedies precluding grant of injunctive relief; (6) injunction was not too broad; and (7) there is no First Amendment right of access to student disciplinary records detailing criminal activities and punishment.

Affirmed.

West Headnotes

[1] Federal Courts 170B 776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Court of Appeals reviews de novo the district court's determination of whether the plaintiff had standing to bring the present case, while affording due deference to the district court's factual determinations on the issue.

[2] Federal Courts 170B 814.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk814 Injunction
170Bk814.1 k. In General. Most Cited Cases

Injunction 212 1

212 Injunction
212I Nature and Grounds in General
212I(A) Nature and Form of Remedy
212k1 k. Nature and Purpose in General. Most Cited Cases
The decision to grant a permanent injunction is within the sound discretion of the district court, and thus grant of a permanent injunction is reviewed for abuse of that discretion.

[3] United States 393 82(2)

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(2) k. Aid to State and Local Agencies in General. Most Cited Cases
Constitutional spending power permits Congress to fix the terms on which it disburses federal money to the states, and to receive those funds, the states must agree to comply with clearly stated, federally imposed conditions. U.S.C.A. Const. Art. 1, § 8, cl.

I.

[4] **Colleges and Universities 81 ⚿9.40**

81 Colleges and Universities
81k9 Students
81k9.40 k. Records, Transcripts and Recommendations. Most Cited Cases

Injunction 212 ⚿78

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k78 k. School Boards and Officers. Most Cited Cases
United States and the Secretary of Education had standing to sue to enforce the "contractual" conditions of the Family Education Rights and Privacy Act (FERPA), in lieu of its administrative remedies, and if remedies at law were inadequate, then the government could seek contractual relief through a court of equity, including seeking prior restraints such as a permanent injunction against release of student records in violation of FERPA. U.S.C.A. Const. Art. 1, § 8, cl. 1; General Education Provisions Act, §§ 444(b)(2), (f), 454(a), as amended, 20 U.S.C.A. §§ 1232g(b)(2), (f), 1234c(a).

[5] **Administrative Law and Procedure 15A ⚿305**

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(A) In General
15Ak303 Powers in General
15Ak305 k. Statutory Basis and Limitation. Most Cited Cases

Administrative Law and Procedure 15A ⚿665.1

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak665 Right of Review
15Ak665.1 k. In General. Most Cited Cases
Agencies do not automatically have standing to sue for actions that frustrate the purposes of their statutes; rather, an agency garners its authority to act from a congressional grant of such authority in the agency's enabling statute.

[6] **Administrative Law and Procedure 15A ⚿305**

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(A) In General
15Ak303 Powers in General
15Ak305 k. Statutory Basis and Limitation. Most Cited Cases

Administrative Law and Procedure 15A ⚿325

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(A) In General
15Ak325 k. Implied Powers. Most Cited Cases
If Congress does not expressly grant or necessarily imply a particular power for an agency, then that power does not exist.

[7] **Federal Courts 170B ⚿791**

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)3 Presumptions
170Bk791 k. Presumptions in General. Most Cited Cases
Court of Appeals will not lightly assume that Congress has stripped it of its equitable jurisdiction; such departure from equity requires a clear and valid legislative command.

[8] **United States 393 ⚿82(2)**

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(2) k. Aid to State and Local Agencies in General. Most Cited Cases
Even in the absence of statutory authority, the United

States has the inherent power to sue to enforce conditions imposed on the recipients of federal grants.

[9] **United States 393 ⚷82(2)**

393 United States
393VI Fiscal Matters
393k82 Disbursements in General
393k82(2) k. Aid to State and Local Agencies in General. Most Cited Cases
Spending clause legislation, when knowingly accepted by a fund recipient, imposes enforceable, affirmative obligations upon the states. U.S.C.A. Const. Art. 1, § 8, cl. 1.

[10] **Records 326 ⚷55**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k55 k. Exemptions or Prohibitions Under Other Laws. Most Cited Cases

States 360 ⚷18.15

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.15 k. Particular Cases, Preemption or Supersession. Most Cited Cases
Ohio Public Records Act does not require disclosure of records the release of which is prohibited by federal law, and thus does not conflict with the Family Education Rights and Privacy Act (FERPA), and preemption is not implicated. General Education Provisions Act, § 444, as amended, 20 U.S.C.A. § 1232g. Ohio R.C. § 149.43(A)(1)(v).

[11] **Federal Courts 170B ⚷433**

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(C) Application to Particular Matters
170Bk433 k. Other Particular Matters. Most Cited Cases
The federal district court was not bound by the Ohio Supreme Court's interpretation of "education records" under the Family Education Rights and Privacy Act (FERPA). General Education Provisions Act, § 444, as amended, 20 U.S.C.A. § 1232g.

[12] **Federal Courts 170B ⚷386**

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(B) Decisions of State Courts as Authority
170Bk386 k. State Constitutions and Statutes, Validity and Construction. Most Cited Cases

Federal Courts 170B ⚷387

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(B) Decisions of State Courts as Authority
170Bk387 k. Federal Constitution and Laws. Most Cited Cases
While federal courts must defer to a state court's interpretation of its own law, federal courts owe no deference to a state court's interpretation of a federal statute.

[13] **Records 326 ⚷31**

326 Records
326II Public Access
326II(A) In General
326k31 k. Regulations Limiting Access; Offenses. Most Cited Cases
Student disciplinary records are "education records" within the contemplation of the Family Education Rights and Privacy Act (FERPA), even though some of the disciplinary proceedings may have addressed criminal offenses that also constitute violations of the educational institutions' rules or policies. General Education Provisions Act, § 444(a)(4)(A), (4)(B)(ii), (b)(6)(A-C), (h)(2), (i)(1), as amended, 20 U.S.C.A. § 1232g(a)(4)(A), (4)(B)(ii), (b)(6)(A-C), (h)(2), (i)(1).

[14] **Administrative Law and Procedure 15A ⚷412.1**

15A Administrative Law and Procedure
15AIV Powers and Proceedings of

Administrative Agencies, Officers and Agents
15AIV(C) Rules and Regulations
15Ak412 Construction
15Ak412.1 k. In General. Most Cited Cases

Statutes 361 ⚿188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases
Court reads statutes and regulations with an eye to their straightforward and commonsense meanings.

[15] Statutes 361 ⚿190

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k190 k. Existence of Ambiguity. Most Cited Cases
When court can discern an unambiguous and plain meaning from the language of a statute, its task is at an end.

[16] Statutes 361 ⚿206

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k206 k. Giving Effect to Entire Statute. Most Cited Cases
A court must avoid an interpretation of a statutory provision that renders other provisions superfluous.

[17] Administrative Law and Procedure 15A ⚿330

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(A) In General
15Ak330 k. Statutes, Construction and Application Of. Most Cited Cases
Where a statutory provision was somewhat ambiguous, the district court properly turned to the regulations of the administering agency for interpretive assistance.

[18] Records 326 ⚿31

326 Records
326II Public Access
326II(A) In General
326k31 k. Regulations Limiting Access; Offenses. Most Cited Cases
Definitions in Department of Education (DOE) regulations of "law enforcement unit," and of when records are "law enforcement records" or "education records," and interpretation that "all disciplinary records, including those related to non-academic or criminal misconduct by students, are 'education records' subject to FERPA," are reasonable and permissible constructions of the Family Education Rights and Privacy Act (FERPA). General Education Provisions Act, § 444, as amended, 20 U.S.C.A. § 1232g; 34 C.F.R. §§ 99.3, 99.8(a)(1)(i),(ii), (2), (b)(2)(ii), (c)(2).

[19] Federal Courts 170B ⚿820

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk820 k. Depositions and Discovery. Most Cited Cases
The district court's decision not to permit intervening defendant discovery before ruling on plaintiff's motion for summary judgment and permanent injunction was reviewable for abuse of discretion. Fed.Rules Civ.Proc.Rule 56(f), 28 U.S.C.A.

[20] Injunction 212 ⚿130

212 Injunction
212III Actions for Injunctions
212k130 k. Trial or Hearing. Most Cited Cases
An evidentiary hearing typically is required before an injunction may be granted, but a hearing is not necessary where no triable issues of fact are involved.

[21] Federal Civil Procedure 170A ⚿2553

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)3 Proceedings
170Ak2547 Hearing and Determination
170Ak2553 k. Time for Consideration of Motion. Most Cited Cases
In action by the United States to enjoin release by universities of student disciplinary records in violation of the Family Education Rights and Privacy Act (FERPA), the district court did not abuse its discretion in denying discovery to intervening newspaper before granting summary judgment and permanent injunction to the United States, where the district court was faced with questions of law and additional discovery would not have aided in the resolution of those questions. General Education Provisions Act, § 444, as amended, 20 U.S.C.A. § 1232g; Fed.Rules Civ.Proc.Rule 56(f), 28 U.S.C.A.

[22] **Injunction 212 ⚿14**

212 Injunction
212I Nature and Grounds in General
212I(B) Grounds of Relief
212k14 k. Irreparable Injury. Most Cited Cases

Injunction 212 ⚿16

212 Injunction
212I Nature and Grounds in General
212I(B) Grounds of Relief
212k15 Inadequacy of Remedy at Law
212k16 k. In General. Most Cited Cases

Injunction 212 ⚿138.6

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.6 k. Nature and Extent of Injury; Irreparable Injury. Most Cited Cases

Injunction 212 ⚿138.9

212 Injunction
212IV Preliminary and Interlocutory Injunctions
212IV(A) Grounds and Proceedings to Procure
212IV(A)2 Grounds and Objections
212k138.9 k. Adequacy of Remedy at Law. Most Cited Cases
In order to obtain either a preliminary or permanent injunction, a party must demonstrate that failure to issue the injunction is likely to result in irreparable harm and, in addition, the party seeking injunctive relief generally must show that there is no other adequate remedy at law.

[23] **Injunction 212 ⚿189**

212 Injunction
212V Permanent Injunction and Other Relief
212k189 k. Nature and Scope of Relief. Most Cited Cases
If injunctive relief is proper, it should be no broader than necessary to remedy the harm at issue.

[24] **Injunction 212 ⚿78**

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k78 k. School Boards and Officers. Most Cited Cases
Given that the Family Education Rights and Privacy Act (FERPA) permits the Department of Education (DOE) to bring a cause of action, including an action for injunctive relief, but does not expressly authorize the granting of injunctive relief to halt or prevent a violation of the FERPA, court's traditional role in equity applies, requiring a determination of whether failure to issue an injunction is likely to result in irreparable harm. General Education Provisions Act, § 454(a)(4), as amended, 20 U.S.C.A. § 1234c(a)(4).

[25] **Injunction 212 ⚿78**

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k78 k. School Boards and Officers. Most Cited Cases
The Department of Education (DOE) would suffer irreparable harm if universities were not enjoined

from releasing student disciplinary records in violation of the Family Education Rights and Privacy Act (FERPA), thus supporting issuance of a permanent injunction, as continued release of the records clearly will injure the reputations of the students involved, including the perpetrator, the victim and any witnesses, the inherent privacy interest that Congress sought to protect will be greatly diminished, and Congress granted the DOE authority to sue to enforce those privacy interests, so that FERPA must also contemplate that the DOE experiences the irreparable harm suffered by those students whose privacy interests are violated. General Education Provisions Act, § 444(b)(2), as amended, 20 U.S.C.A. § 1232g(b)(2).

[26] **United States 393 ⚿126**

393 United States
393IX Actions
393k126 k. Rights of Action by United States or United States Officers. Most Cited Cases
When a specific interest and right has been conferred upon the United States by statute, the remedies and procedures for enforcing that right are not to be narrowly construed so as to prevent the effectuation of the policy declared by Congress.

[27] **Action 13 ⚿3**

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory Rights of Action. Most Cited Cases

Colleges and Universities 81 ⚿9.40

81 Colleges and Universities
81k9 Students
81k9.40 k. Records, Transcripts and Recommendations. Most Cited Cases
Congress did not establish individually enforceable rights through the Family Education Rights and Privacy Act (FERPA) but, instead, acknowledged students' and parents' privacy interests as a whole and empowered the Department of Education (DOE) to protect those interests when a university systemically ignores its obligations under FERPA. General Education Provisions Act, §§ 444(b)(1,2), 454(a), as amended, 20 U.S.C.A. § 1232g(b)(1,2), 1234c(a).

[28] **Injunction 212 ⚿24**

212 Injunction
212I Nature and Grounds in General
212I(B) Grounds of Relief
212k20 Defenses or Objections to Relief
212k24 k. Injury or Inconvenience to Public. Most Cited Cases
In cases involving the public interest as defined or protected by an Act of Congress, the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief.

[29] **Injunction 212 ⚿78**

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k78 k. School Boards and Officers. Most Cited Cases
Statute stating that no provision "shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any educational school system" did not preclude issuance of a permanent injunction to prevent universities from releasing student disciplinary records in violation of the Family Education Rights and Privacy Act (FERPA). General Education Provisions Act, §§ 437, 444, as amended, 20 U.S.C.A. §§ 1232, 1232g.

[30] **Schools 345 ⚿20**

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k20 k. Regulation and Supervision of Schools and Educational Institutions in General. Most Cited Cases
Statute stating that no provision "shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any educational school system" was directed primarily at the possibility of the Department of Education (DOE) assuming the role of a national school board, but it may also apply if a federal court plays an overly

active role in supervising a state's expenditures of federal funding. General Education Provisions Act, § 438, as amended, 20 U.S.C.A. § 1232a.

[31] **Injunction 212 ⚿78**

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k78 k. School Boards and Officers. Most Cited Cases

Money damages were insufficient relief for violation of the Family Education Rights and Privacy Act (FERPA) by universities' release of student disciplinary records, and thus did not preclude issuance of a permanent injunction, since, in general, a loss of privacy and injury to reputation are difficult to calculate, parties had no way of knowing how many people would require compensation and how much money would compensate each injury, and the harm suffered by the myriad number of students affected by the continued release of student disciplinary records was irreparable, and by definition, not compensable. General Education Provisions Act, § 444, as amended, 20 U.S.C.A. § 1232g.

[32] **Injunction 212 ⚿78**

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k78 k. School Boards and Officers. Most Cited Cases

None of the administrative remedies authorized by the Family Education Rights and Privacy Act (FERPA) would be adequate to stop the violations of FERPA by universities' release of student disciplinary records, and thus did not preclude issuance of a permanent injunction, as Ohio Supreme Court's decision served as precedent to compel state universities to release student disciplinary records in the absence of a federal court injunction, so that it would be nearly impossible to obtain voluntary compliance, and cutting off federal funding would be detrimental to the universities' educational purpose, would injure more students than it would protect, and would not guarantee compliance because universities would still feel constrained to follow the Ohio Supreme Court's interpretation. General Education Provisions Act, § 454(a)(1, 3), as amended, 20 U.S.C.A. § 1234c(a)(1, 3).

[33] **Injunction 212 ⚿78**

212 Injunction
212II Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k78 k. School Boards and Officers. Most Cited Cases

A cease and desist order under the enforcement provisions of the Family Education Rights and Privacy Act (FERPA) would be an inadequate remedy, and thus did not preclude issuance of a permanent injunction against universities's release of student disciplinary records in violation of FERPA, as such an order requires new enforcement measures each time a violation occurs, and is not self-executing and would lead to intermittent violative releases that would otherwise be protected by permanent injunctive relief. General Education Provisions Act, § 454(a)(2), as amended, 20 U.S.C.A. § 1234c(a)(2).

[34] **Injunction 212 ⚿189**

212 Injunction
212V Permanent Injunction and Other Relief
212k189 k. Nature and Scope of Relief. Most Cited Cases

Permanent injunction which was crafted to protect the privacy interests embodied in the Family Education Rights and Privacy Act (FERPA), and narrowly tailored to enjoin only the release of student disciplinary records or any personally identifiable information contained therein, except as otherwise expressly permitted under the FERPA, was not too broad, and the district court did not abuse its discretion in granting such relief. General Education Provisions Act, § 444, as amended, 20 U.S.C.A. § 1232g.

[35] **Colleges and Universities 81 ⚿9.40**

81 Colleges and Universities
81k9 Students
81k9.40 k. Records, Transcripts and Recommendations. Most Cited Cases

Constitutional Law 92 ⚿2005

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press
92XVIII(Q) Education
92XVIII(Q)2 Post-Secondary Institutions
92k2005 k. In General. Most Cited Cases
(Formerly 92k90.1(1.4))
There is no First Amendment right of access to student disciplinary records detailing criminal activities and punishment, as university disciplinary proceedings are not criminal proceedings despite the fact that some behavior that violates a university's rules and regulations may also constitute a crime, student disciplinary proceedings and records historically have not been open to the press and general public, public access does not play a significant positive role in the functioning of the particular process in question, and denial of access to student disciplinary records would not prevent newspaper from obtaining information about crime on university campuses. U.S.C.A. Const.Amend. 1; Higher Education Act of 1965, § 485(f)(1)(F), as amended, 20 U.S.C.A. § 1092(f)(1)(F).

[36] **Constitutional Law 92 ⚿1569**

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)3 Particular Issues and Applications in General
92k1569 k. Government Information. Most Cited Cases
(Formerly 92k90.1(1))

Constitutional Law 92 ⚿4067

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)2 Governments and Political Subdivisions in General
92k4067 k. Public Records or Information. Most Cited Cases
(Formerly 92k320.5)
Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control. U.S.C.A. Const.Amends. 1, 14.

[37] **Constitutional Law 92 ⚿2106**

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(V) Judicial Proceedings
92XVIII(V)2 Criminal Proceedings
92k2105 Access to Proceedings; Closure
92k2106 k. In General. Most Cited Cases
(Formerly 92k90.1(3))
There is a First Amendment right of access to criminal trials, proceedings, and records: a qualified right of access attaches where the information sought has historically been open to the press and general public and public access plays a significant positive role in the functioning of the particular process in question, and once the qualified First Amendment right of access attaches, it can be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. U.S.C.A. Const.Amend. 1.

*802 Mark B. Stern (briefed), Alisa B. Klein (argued and briefed), U.S. Dept. of Justice Civ. Div., Appellate Sec., Washington, DC, for Plaintiff-Appellee.
Margaret R. Carmany (briefed), Gerald L. Draper (argued and briefed), Roetzel & Andress, Columbus, OH, for Defendants-Appellees.
Kenneth A. Zirm (briefed), Walter & Haverfield, Cleveland, OH, for Amici Curiae.
Adam E. Scurti (briefed), King, Hargrave, Scurt & Jack, Steubenville, OH, for Amici Curiae.
Marc D. Mezibov (argued and briefed), Laura A. Abrams (briefed), Christian A. Jenkins (briefed), Sirkin, Pinales, Mezibov & Schwartz, Cincinnati, OH, for Intervenor-Appellant.

Before SILER and MOORE, Circuit Judges; FORESTER, Chief District Judge.[FN*]

FN* The Honorable Karl S. Forester, United States Chief District Judge for the Eastern District of Kentucky, sitting by designation.

OPINION

KARL S. FORESTER, Chief District Judge.

Intervening Defendant-Appellant *The Chronicle of Higher Education* ("*The Chronicle* ") contests the district court's grant of summary judgment and subsequent permanent injunction in favor of Plaintiff-Appellee the United States. Specifically, the district court concluded that university disciplinary records were "educational records" as that term is defined*803 in the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and that releasing such records and the personally identifiable information contained therein constitutes a violation of the FERPA. The district court permanently enjoined the Defendants-Appellees Miami University and The Ohio State University ("Miami," "Ohio State," or collectively "Universities") from releasing student disciplinary records or any "personally identifiable information" contained therein, except as otherwise expressly permitted under the FERPA. For the reasons that follow, we AFFIRM.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case was born of a dispute between a university newspaper and the university's administration. In the spring of 1995, the editor-in-chief of Miami's student newspaper, *The Miami Student* ("the paper"), sought student disciplinary records from the University Disciplinary Board ("UDB") to track crime trends on campus.[FN1] *State ex rel. Miami Student v. Miami University*, 79 Ohio St.3d 168, 680 N.E.2d 956, 957 (Ohio 1997). Miami initially refused to release the requested records, but after the editors made a written request pursuant to the Ohio Public Records Act, Ohio Rev.Code § 149.43, for all UDB records from 1993-1996, Miami released the records. *Id.* Pursuant to the FERPA privacy provisions, however, Miami redacted "from these records the identity, sex, and age of the accuseds [sic], as well as the date, time and location of the incidents giving rise to the disciplinary charges." *Id.* The editors were dissatisfied with Miami's redacted disclosure and subsequently filed an original mandamus action in the Ohio Supreme Court seeking full disclosure of the UDB records, redacting only the "name, social security number, or student I.D. number of any accused or convicted party." *Id.*

FN1. Later that year, the editor-in-chief's successor joined in her pursuit to obtain the student disciplinary records, hereinafter collectively referred to as the "editors."

A divided Ohio Supreme Court granted the editors a writ of mandamus. *Id.* at 958. According to the Court, the Ohio Public Records Act "provides for full access to all public records upon request unless the requested records fall within one of the specific exceptions listed in the Act."*Id.* The relevant exception in the *Miami* case "excludes from the definition of public records those records 'the release of which is prohibited by state or federal law.' " *Id.* (quoting Ohio Rev.Code § 149.43(A)(1)(*o*)).[FN2] Relying on a Georgia Supreme Court case,[FN3] the Ohio Supreme Court concluded that university disciplinary records were not "education records" as defined in the FERPA. *Id.* at 958-59. The Ohio Court reasoned that, because disciplinary records were not protected by the FERPA, they did not fall within the prohibited-by-federal-law exception to the Ohio Public Records Act. *Id.* Accordingly, the Court granted a writ of mandamus compelling Miami to provide the records requested by the editors. *Id.* at 959-60. Miami sought United States Supreme Court review of the Ohio decision, but the Supreme Court denied certiorari. *Miami University v. The Miami Student*, 522 U.S. 1022, 118 S.Ct. 616, 139 L.Ed.2d 502 (1997).

FN2. The Ohio Legislature subsequently amended the Ohio Public Records Act and the pertinent provision is now found at Ohio Rev.Code § 149.43(A)(1)(v). The Court will use the updated citation for the remainder of the opinion.

FN3. *Red & Black Publishing Co. v. Bd. of Regents of Univ. Sys. of Georgia*, 262 Ga. 848, 427 S.E.2d 257 (Georgia 1993).

*804 On the heels of the Ohio Supreme Court decision, *The Chronicle*,[FN4] pursuant to the Ohio Public Records Act, made written requests of Miami and Ohio State for disciplinary records amassed during the calendar years 1995 and 1996. Because the Ohio Supreme Court concluded that student disciplinary records were not educational records covered by the FERPA, *The Chronicle* requested the records with names intact and minimal redaction as required by the Ohio Public Records Act. Upon

receipt of the request, and in light of the Ohio Supreme Court decision, Miami contacted the United States Department of Education ("DOE") and explained that it might not be able to comply with the FERPA.[FN5] The DOE told Miami that it believed the Ohio Supreme Court was incorrect in holding that student disciplinary records are not "education records" under the FERPA. *Declaration of LeRoy S. Rooker*, J.A. at 91. The DOE assured Miami "that the FERPA prohibits the University from releasing personally identifiable information contained in student disciplinary records." *Id.*

FN4. *The Chronicle* states that it is "engaged in the business of publishing and distributing a national weekly newspaper, ... that is the preeminent source of information about higher education in the United States." *The Chronicle's Motion to Intervene* in the underlying district court case, J.A. at 102.

FN5. When an educational agency or institution believes that it cannot comply with the FERPA due to a potential conflict with state laws, it must notify the DOE, citing the potentially conflicting law. *See* 34 C.F.R. § 99.61.

In December of 1997, Miami complied in part with *The Chronicle's* request by providing the newspaper virtually unredacted disciplinary records from November, 1995, and November, 1996. *Id.* at 92. Miami informed the DOE that it intended to comply with the remainder of *The Chronicle's* request. *Id.* In addition, Miami advised the DOE that it "had adopted a policy of releasing disciplinary records to any third-party requestor." *Id.*

In January of 1998, Ohio State confirmed with the DOE that it too had received *The Chronicle's* request for all disciplinary records from 1995 and 1996. *Id.* Ohio State informed the DOE that it already had released unredacted disciplinary records from November, 1995, and November, 1996. *Id.* Thereafter, Ohio State told the DOE that it intended to comply with the remainder of *The Chronicle's* request. *Id.*

Shortly after the DOE learned that Miami and Ohio State intended to release student disciplinary records containing personally identifiable information without the consent of the student, the United States filed the underlying complaint against the Universities.[FN6] In the complaint, the DOE sought declaratory and preliminary and permanent injunctive relief prohibiting the Universities from releasing student disciplinary records that contain personally identifiable information, except as permitted under the FERPA. The DOE immediately filed a motion to preliminarily enjoin the Universities' release of student disciplinary records. The district court granted the motion and noted that the parties did not dispute the material facts; therefore, the court was left with a pure question of law.

FN6. The United States brought the underlying action on its own behalf and on behalf of the United States Department of Education, hereinafter referred to collectively as the "DOE."

On February 13, 1998, *The Chronicle* filed an unopposed motion to intervene and the district court granted the motion. *The Chronicle* subsequently filed a motion to dismiss the action and a motion to establish an order of procedure. The motion to *805 dismiss contended that the DOE lacked standing to bring this action and that the DOE's enforcement power was limited to the administrative remedies outlined in the FERPA. The second motion alleged that *The Chronicle* may dispute certain material facts. *The Chronicle* requested a reasonable period of time for discovery and the filing of additional affidavits to develop those facts.

The DOE responded to *The Chronicle's* motions and filed its own motion for summary judgment. The district court denied *The Chronicle's* motion to dismiss and motion for an order of procedure. Determining that the student disciplinary records were "education records" under the FERPA, the court granted the DOE's motion for summary judgment and permanently enjoined the Universities from releasing student disciplinary records in violation of the FERPA.[FN7] This timely appeal followed.

FN7. Given this author's intimate familiarity with the caseload and backlog facing district court judges across the country, Judge George Smith should be commended for his remarkably detailed and insightful opinion and order in this case. *See United States v.*

Miami University, 91 F.Supp.2d 1132 (S.D.Ohio 2000).

II. *THE CHRONICLE'S* APPEAL

The Chronicle asserts that the district court should be reversed for several reasons. First, *The Chronicle* contends that the DOE lacks standing to bring an action seeking injunctive relief and compliance with the FERPA. Second, *The Chronicle* argues that the district court erred in holding that the FERPA "prohibits" education records disclosure, thereby concluding that education records were not subject to disclosure under the Ohio Public Records Act. Instead, *The Chronicle* contends that the district court implicitly held that the Ohio public records law was preempted by the FERPA. Third, *The Chronicle* alleges that the district court erred in holding that student disciplinary records are education records within the meaning of the FERPA. Next, *The Chronicle* contends that the district court erred by granting summary judgment without first permitting discovery to develop a sufficient factual record. Fifth, *The Chronicle* alleges that the United States had an entirely adequate remedy at law and failed to show irreparable harm; therefore, the district court erred in granting broad permanent injunctive relief. Finally, *The Chronicle* argues that, to the extent it prohibits disclosure of student disciplinary records, the FERPA violates the First Amendment and the district court failed to recognize that violation. After a recitation of the applicable standards of review and a brief FERPA synopsis, we will address these arguments in turn.

A. Standards of Review

We review a district court's grant of summary judgment *de novo*, using the same standard employed by the district court. *Herman Miller, Inc. v. Palazzetti Imports and Exports*, 270 F.3d 298, 308 (6th Cir.2001) (citing *Daddy's Junky Music Stores, Inc. v. Big Daddy's Family Music Center*, 109 F.3d 275, 280 (6th Cir.1997)). Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). In deciding a motion for summary judgment, this Court views the factual evidence and draws all reasonable inferences in favor of the nonmoving party. *Herman Miller, Inc.*, 270 F.3d at 308 (citing *National Enters., Inc. v. Smith*, 114 F.3d 561, 563 (6th Cir.1997)). Nonetheless, "[t]he mere existence of a scintilla ***806** of evidence in support of the [nonmoving party's] position will be insufficient;" as noted above, the requirement is that there be no *genuine* issue of *material* fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) (emphasis in original).

[1] This Court reviews *de novo* the district court's determination of whether the plaintiff had standing to bring the present case while affording due deference to the court's factual determinations on the issue. *See Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 492 (6th Cir.1999). In addition, we review issues of statutory interpretation *de novo*. *Walton v. Hammons*, 192 F.3d 590, 592 (6th Cir.1999).

[2] The decision to grant a permanent injunction is within the sound discretion of the district court. *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1067 (6th Cir.1998) (citing *Wayne v. Village of Sebring*, 36 F.3d 517, 531 (6th Cir.1994)). Accordingly, we review a district court's grant of permanent injunction for abuse of that discretion. *See CSX Transp., Inc. v. Tennessee State Bd. of Equalization*, 964 F.2d 548, 553 (6th Cir.1992). "A district court abuses its discretion when it relies on clearly erroneous findings of fact or when it improperly applies the law." *Herman Miller, Inc.*, 270 F.3d at 317 (citing *Christian Schmidt Brewing Co. v. G. Heileman Brewing Co.*, 753 F.2d 1354, 1356 (6th Cir.1985)). "An abuse of discretion is defined as a definite and firm conviction that the district court committed a clear error of judgment." *Id.* (citing *Pouillon v. City of Owosso*, 206 F.3d 711, 714 (6th Cir.2000)).

B. Family Education Rights and Privacy Act

[3] For the last quarter of a century, the FERPA has helped protect the privacy interests of students and their parents. In fact, Congress enacted the FERPA "to protect [parents' and students'] rights to privacy by limiting the transferability of their records without their consent." Joint Statement, 120 Cong. Rec. 39858, 39862 (1974). Pursuant to its constitutional spending power,[FN8] Congress provides funds to educational institutions via the FERPA on the condition that, *inter alia*, such agencies or institutions

do not have a "policy or practice of permitting the release of education records (or personally identifiable information contained therein ...) of students without the written consent of [the students or] their parents[.]" 20 U.S.C. § 1232g(b)(1). The Act also provides that "[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records," except as permitted by the Act. 20 U.S.C. § 1232g(b)(2).[FN9] Congress also recognizes that, based upon the privacy interests protected by the FERPA, educational institutions may withhold from *the federal government* certain personal data on students *807 and families. *See* 20 U.S.C. § 1232i. Because Congress holds student privacy interests in such high regard:

> the refusal of a[n] ... educational agency or institution ... to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance.

Id. In other words, Congress places the privacy interests of students and parents above the federal government's interest in obtaining necessary data and records. The Act broadly defines "education records" as "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A).

FN8. "The Congress shall have the Power to ... provide for the ... general Welfare of the United States[.]" U.S. Const. art. I, § 8, cl. 1. The Constitutional spending power permits Congress to fix the terms on which it disburses federal money to the states, and to receive those funds, the states must agree to comply with clearly stated, federally imposed conditions. *See Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981).

FN9. The DOE's definition of "personally identifiable information" includes the student's name, a family member's name, the address of the student or family member, personal identifiers such as the student's social security number or student number, and personal characteristics or other information that would make the student's identity easily traceable. *See* 34 C.F.R. § 99.3

C. Standing

[4][5][6] On appeal, *The Chronicle* contends that the DOE and the United States [FN10] do not have standing to bring this suit for injunctive relief because Congress has not conferred such authority upon them, and because they are bound by the administrative remedies enumerated in the Act and its corresponding regulations. Indeed, "[a]gencies do not automatically have standing to sue for actions that frustrate the purposes of their statutes." *Dir., Office of Workers' Compensation Programs, DOL v. Newport News Shipbuilding and Dry Dock Co.*, 514 U.S. 122, 132, 115 S.Ct. 1278, 131 L.Ed.2d 160 (1995). An agency garners its authority to act from a congressional grant of such authority in the agency's enabling statute. *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374, 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986). If Congress does not expressly grant or necessarily imply a particular power for an agency, then that power does not exist. *See Walker v. Luther*, 830 F.2d 1208, 1211 (2d Cir.1987). Accordingly, we must look to the language of the Act and its enforcement provisions to determine whether Congress intended to provide the DOE with standing to sue for injunctive relief.

FN10. As noted earlier, the United States sued on its own behalf and on behalf of the DOE. When faced with this situation, other courts have held that the United States may sue in its own name even though a statute bestows enforcement rights and obligations on a federal agency. *See, e.g., United States v. Stuart*, 392 F.2d 60, 64 (3d Cir.1968) ("[T]he SBA is a nonincorporated federal agency and an integral part of the United States Government; [ ]while the Administrator may sue, the United States

> may also sue on this type of claim as the real party in interest.")

The express language of the FERPA provides:

> The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

20 U.S.C. § 1232g(f). Standing alone, this singular provision, allowing the Secretary to take "appropriate actions" to enforce this section, arguably may not sufficiently empower the DOE to enforce the FERPA through the courts. *Cf. Dir. Office of Workers' Compensation Programs, DOL*, 514 U.S. at 132, 115 S.Ct. 1278. Congress did not resign the Secretary's enforcement power to this sole, imprecise provision. Instead, 20 U.S.C. § 1234c(a) provides that *808 the Secretary may take the following actions when a recipient of funds fails to comply with the FERPA:

> (1) withhold further payments under that program, as authorized by section 1234d of this title;
>
> (2) issue a complaint to compel compliance through a cease and desist order of the Office, as authorized by section 1234e of this title;
>
> (3) enter into a compliance agreement with a recipient to bring it into compliance, as authorized by section 1234f of this title; or
>
> (4) *take any other action authorized by law with respect to the recipient.*

Id. (emphasis added). We believe that the fourth alternative expressly permits the Secretary to bring suit to enforce the FERPA conditions in lieu of its administrative remedies. The Fifth Circuit held as much when reviewing a similar catch-all enforcement provision in the Rehabilitation Act, 29 U.S.C. § 794. *See United States v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1050 (5th Cir.1984) ("We do not mean to imply that a federal agency seeking to enforce ... Section 504 must resort to administrative remedies. The statute expressly states otherwise: an agency may resort to 'any other means authorized by law'-including the federal courts."). The District of Columbia Circuit recognized similar alternatives under Title VI of the Civil Rights Act. *See National Black Police Ass'n v. Velde*, 712 F.2d 569, 575 (D.C.Cir.1983), *cert. denied*, 466 U.S. 963, 104 S.Ct. 2180, 80 L.Ed.2d 562 (1984) (Title VI "allows the funding agency to effect compliance through funding termination or 'any other means authorized by law.' Although fund termination was envisioned as the primary means of enforcement under Title VI, ... Title VI clearly tolerates other enforcement schemes. Prominent among these other means of enforcement is referral of cases to the Attorney General, who may bring an action against the recipient. The choice of enforcement methods was intended to allow funding agencies flexibility in responding to instances of discrimination.")(footnotes omitted).

[7] Having reached that conclusion, it follows that the DOE can proceed in equity: a common and "authorized" means to enforce legal obligations. After all, this Court will not lightly assume that Congress has stripped it of its equitable jurisdiction; such departure from equity requires a clear and valid legislative command. *See Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S.Ct. 587, 88 L.Ed. 754 (1944); *Porter v. Warner Holding Co.*, 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946).

[8] Even in the absence of statutory authority, the United States has the inherent power to sue to enforce conditions imposed on the recipients of federal grants. "[L]egislation enacted pursuant to the spending power [, like the FERPA,] is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst State School and Hospital*, 451 U.S. at 17, 101 S.Ct. 1531; *King v. Smith*, 392 U.S. 309, 333 n. 34, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968)("There is of course no question that the Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed."). If Congress imposes a "condition on the grant of federal moneys, it must do so unambiguously;" otherwise, the State cannot "voluntarily and knowingly accept [ ] the terms of the 'contract.' " *Id.*

[9] Spending clause legislation, when knowingly

accepted by a fund recipient, imposes enforceable, affirmative obligations upon the states. *See* *809 *Wheeler v. Barrera*, 417 U.S. 402, 427, 94 S.Ct. 2274, 41 L.Ed.2d 159 (1974), *modified on another ground*, 422 U.S. 1004, 95 S.Ct. 2625, 45 L.Ed.2d 667 (1975) (recognizing that states and local agencies must fulfill their part of a spending clause contract if they choose to accept the funds); *King*, 392 U.S. at 333, 88 S.Ct. 2128; *see also South Dakota v. Dole*, 483 U.S. 203, 206-08, 107 S.Ct. 2793, 97 L.Ed.2d 171 (1987) (noting that clearly stated conditions permit a State to be "cognizant of the consequences of their participation"). Finally, the Supreme Court repeatedly has recognized a court's equitable powers to enforce spending clause obligations and conditions under various statutes. *See Rosado v. Wyman*, 397 U.S. 397, 420-22, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970) (enjoining the implementation of a state welfare program because the state scheme conflicted with the spending clause conditions in federal legislation); *Pennhurst State School and Hospital*, 451 U.S. at 29, 101 S.Ct. 1531 (listing various equitable remedies for state violations of spending legislation conditions).

"Under FERPA, schools and educational agencies receiving federal financial assistance *must* comply with certain conditions. One condition specified in the Act is that sensitive information about students *may not be released* without [the student's] consent." *Owasso Independent School District v. Falvo*, 534 U.S. 426, 122 S.Ct. 934, 937, 151 L.Ed.2d 896 (2002) (emphasis added). The FERPA unambiguously conditions the grant of federal education funds on the educational institutions' obligation to respect the privacy of students and their parents. *See* 20 U.S.C. § 1232g(b)(2) (precluding schools from receiving federal funds if they maintain a policy or practice of disclosing education records without the student's consent). Based upon these clear and unambiguous terms, a participant *who accepts federal education funds* is well aware of the conditions imposed by the FERPA and is clearly able to ascertain what is expected of it. *See Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 640, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999) (quoting *Pennhurst State School and Hospital*, 451 U.S. at 17, 101 S.Ct. 1531). Once the conditions and the funds are accepted, the school is indeed prohibited from systematically releasing education records without consent.[FN11] Based upon the case law discussed above, we believe that, in the alternative to its statutory authority to sue, the United States may enforce the Universities' "contractual" obligations through the traditional means available at law. If those remedies are inadequate, then the government may seek contractual relief through a court of equity.

> FN11. We limit this conclusion, that the FERPA imposes a binding obligation on schools that accept federal funds, to federal government action to enforce the FERPA. In *Gonzaga University v. Doe*, the Supreme Court held that the FERPA does not create personal rights that an individual may enforce through 42 U.S.C. § 1983. 536 U.S. 273, at ----, 122 S.Ct. 2268, 153 L.Ed.2d 309, 2002 WL 1338070, at * 3 (June 20, 2002).

Finally, *The Chronicle* argues that the DOE has no power to prevent future violations of the FERPA because the statute only provides a remedy when the recipient *"is failing* to comply substantially with any requirement of law applicable to such funds." 20 U.S.C. § 1234c(a) (emphasis added). *The Chronicle* contends that because Congress couched violations in the present tense, it did not intend to provide prior restraints such as the permanent injunction granted in this case. We find these grammatical semantics unpersuasive. The administrative remedies outlined in the Act encompass various forms of forward-looking relief, designed to bring straying fund recipients into compliance. According to the enforcement provisions, the Secretary may withhold further payments under the program, compel compliance*810 through a cease and desist order, and enter into a compliance agreement. None of these provisions imply a congressional intent to limit prospective relief; to the contrary, it appears that Congress envisioned a broad range of "prior restraint" remedies in the event that fund recipients failed to comport with their spending clause restraints. Accordingly, we hold that the DOE had standing to bring the case at bar.

D. The FERPA, *Miami* and the Ohio Public Records Act

The Chronicle finds error in the district court's alleged refusal to respect the Ohio Supreme Court's interpretation of the Ohio Public Records Act, Ohio Rev.Code § 149.43. *The Chronicle* contends that,

because the Ohio Supreme Court held that disciplinary records are not "education records" as defined by the FERPA, it was unnecessary for the Court to decide whether the FERPA prohibits the disclosure of the requested records within the meaning of Ohio Rev.Code § 149.43. *State ex rel. Miami Student*, 680 N.E.2d at 958 n. 1. The Ohio Supreme Court noted that "the Ohio Public Records Act is intended to be liberally construed 'to ensure that governmental records be open and made available to the public ... subject to only a few very limited and narrow exceptions.' " *Id.* at 958. Among those exceptions is a provision that "excludes from the definition of public records those records 'the release of which is prohibited by state or federal law.' " *Id.* (citing Ohio Rev.Code § 149.43(A)(1)(v)). It follows, according to *The Chronicle*, that the district court invaded the province of the state court when it implicitly concluded that the FERPA "prohibited" the release of student disciplinary records. In reaching that conclusion, *The Chronicle* contends that the district court impermissibly broadened the state's otherwise narrow definition of the term "prohibit." We find several flaws in *The Chronicle's* reasoning.

As an initial matter, *The Chronicle* concedes that the Ohio Supreme Court never reached the issue of whether the FERPA "prohibited" the release of education records, much less student disciplinary records as a subpart thereof. Instead, the Ohio Supreme Court misinterpreted a *federal* statute-erroneously concluding that student disciplinary records were not "education records" as defined by the FERPA-and prematurely halted its inquiry based upon that erroneous conclusion. We decline to speculate how the Ohio Supreme Court might otherwise have resolved this issue. Furthermore, whether the release of a particular record is prohibited by federal law necessarily implicates the interpretation of that federal law. The State of Ohio clearly recognized that necessity when it exempted from its definition of public records those records the release of which is prohibited *by federal law*. Ohio Rev.Code § 149.43(A)(1)(v). The prohibition finds its root in the federal law, not the Ohio Public Records Act. Accordingly, to the extent that the district court concluded that the FERPA prohibited the release of education records, it did so on federal grounds.[FN12]

FN12. This conclusion is distinguishable from the Supreme Court's holding on the application of federal versus state law in *Wheeler v. Barrera*, 417 U.S. at 416-19, 94 S.Ct. 2274. In that case, the Court held that state law controlled the decision of "whether federal aid is money 'donated to any state fund for public school purposes,' within the meaning of the Missouri Constitution, Art. 9, § 5." *Id.* The Missouri Constitution broadly described its fund pool for public schools and did not provide an explicit exception for funds received from the federal government. *Id.* In the case at bar, the Ohio legislators explicitly exempted from the definition of public records any records the release of which is prohibited by federal law.

*811 In this case, the United States sought declaratory and injunctive relief against the Universities under the FERPA. Specifically, the United States asked the district court to determine whether student disciplinary records were "education records" as defined by FERPA. If the district court concluded, as it did, that student disciplinary records were "education records," then the United States also sought an injunction prohibiting the Universities from releasing student disciplinary records. The issues before the district court were of federal genesis and required no application of state law.

[10] The Ohio Public Records Act and the *Miami* case were neither explicitly nor implicitly affected by the district court decision. As noted above, the Ohio Public Records Act does not require disclosure of records the release of which is prohibited by federal law. Ohio Rev.Code § 149.43(A)(1)(v). Based on that exception, the Ohio Public Records Act does not conflict with the FERPA and the state and federal statutes can coexist. Furthermore, the *Miami* case expressly adjudicated the relationship between two parties: Miami University and the editors of *The Miami Student*. *See State ex rel. Miami Student*, 680 N.E.2d at 957. We assume that the rights and responsibilities established in that case were satisfied long ago. Unlike the case at bar, the editors in the *Miami* case permitted Miami to redact significantly the student disciplinary records prior to disclosure and, in its mandamus, the Ohio Supreme Court expanded the list of items that Miami could redact. *Id.* at 959. After concluding that student disciplinary

records were not "education records," the Court still permitted Miami to redact the following "personally identifiable information" in accord with the FERPA: the student's name; Social Security Number; student identification number; and the exact date and time of the alleged incident. *Id.* With these court-imposed redactions, the mandamus appears to comport with the FERPA's requirements. *See id.* at 960 (COOK, J. dissenting).

In the case *sub judice, The Chronicle* seeks records fraught with personally identifiable information and virtually untainted by redaction. Given the vast difference in the records sought by *The Chronicle,* it is by no means clear that the *Miami* case would support, without exception, the release of those records.

[11][12] Finally, the district court was not bound by the Ohio Supreme Court's interpretation of "education records" under the FERPA. While federal courts must defer to a State court's interpretation of its own law, *Terminiello v. City of Chicago,* 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131 (1949), federal courts owe no deference to a state court's interpretation of a federal statute, *Kuhnle Brothers, Inc. v. County of Geauga,* 103 F.3d 516, 520 (6th Cir.1997) ("Notions of federalism do not require this court to follow a State court's holdings with respect to federal questions.").

Because the district court's conclusions were based entirely on federal law, and the federal law does not conflict with state law, we agree with the district court's conclusion that preemption is not implicated in this case.

E. Student Disciplinary Records, Education Records and the FERPA

[13] *The Chronicle* argues that the district court erred in concluding that student disciplinary records are "education records" within the contemplation of FERPA. *The Chronicle* states that there is no evidence that Congress ever intended the FERPA to protect records other than those records relating to individual student academic performance, financial aid or scholastic probation. In addition, *The Chronicle* contends that student disciplinary records involving criminal offenses ***812** should be construed as unprotected law enforcement records. Otherwise, the FERPA affords "special" privacy rights to students that the general public does not enjoy.

[14][15] As noted above, we review *de novo* issues of statutory interpretation. *Walton,* 192 F.3d at 592. "We read statutes and regulations with an eye to their straightforward and commonsense meanings." *Henry Ford Health Sys. v. Shalala,* 233 F.3d 907, 910 (6th Cir.2000). "When we can discern an unambiguous and plain meaning from the language of a statute, our task is at an end." *Bartlik v. U.S. Dept. of Labor,* 62 F.3d 163, 166 (6th Cir.1995). With these principles in hand, we turn to the words of Congress for guidance on this issue.

The FERPA broadly defines "education records" as "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). Under a plain language interpretation of the FERPA, student disciplinary records are education records because they directly relate to a student and are kept by that student's university. Notably, Congress made no content-based judgments with regard to its "education records" definition. We find nothing in the statute or its legislative history to the contrary, and the various state court and federal district court cases cited by *The Chronicle* do not sway our conclusion.[FN13] In fact, a detailed study of the statute and its evolution by amendment reveals that Congress intends to include student disciplinary records within the meaning of "education records" as defined by the FERPA. This intention is evinced by a review of the express statutory exemptions from privacy and exceptions to the definition of "education records."

> FN13. Some exemptions and exceptions, both in the statute and the DOE's regulations, have been added in response to those cases cited by *The Chronicle.*

The FERPA sanctions the release of certain student disciplinary records in several discrete situations through exemption. The Act does not prohibit disclosure "*to an alleged victim* of any crime of violence ... or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by the institution against the alleged perpetrator...."20

U.S.C. § 1232g(b)(6)(A) (emphasis added). The *public generally* may be informed of "the final results of any disciplinary proceeding conducted by [an] institution against a student who is an alleged perpetrator of any crime of violence ... or a nonforcible sex offense, if the institution determines ... that the student committed a violation of the institution's rules or policies with respect to such crime or offense." *Id.* at § 1232g(b)(6)(B). "[T]he final results of any disciplinary proceeding (i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and (ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student." *Id.* at § 1232g(b)(6)(C).

These two exemptions clearly evolve from a base Congressional assumption that student disciplinary records are "education records" and thereby protected from disclosure. Working from that base, Congress selected two particular situations in which otherwise protected student disciplinary records may be released. And even then, Congress significantly limits the amount of information that an institution may release and the people to whom the institution may release such information. In the first provision, Congress balanced the privacy interests of an alleged perpetrator*813 of any crime of violence or nonforcible sex offense with the rights of the alleged victim of such a crime and concluded that the right of an alleged victim to know the outcome of a student disciplinary proceeding, regardless of the result, outweighed the alleged perpetrator's privacy interest in that proceeding. Congress also determined that, if the institution determines that an alleged perpetrator violated the institution's rules with respect to any crime of violence or nonforcible sex offense, then the alleged perpetrator's privacy interests are trumped by the public's right to know about such violations. In so doing, Congress acknowledged that student disciplinary records are protected from disclosure but, based on competing public interests, carefully permitted schools to release bits of that information while retaining a protected status for the remainder.

Next, the disciplinary records of a student posing a significant risk to the safety or well-being of that student, other students, or other members of the school community may be disclosed to individuals having a "legitimate educational interest[ ] in the behavior of the student." *Id.* at § 1232g(h)(2). This provision recognizes that a student has a privacy interest in his or her disciplinary records, even if those records reflect that the student poses a significant safety risk. Congress concluded that, although such information may be included in the student's education record, schools may disclose those disciplinary records to teachers and school officials. Obviously this narrow exemption does not contemplate release of the student disciplinary records to the general public.

Finally, if an institution of higher education determines that a student, under the age of twenty-one, "has committed a disciplinary violation with respect to" the use or possession of alcohol or a controlled substance, then the institution may disclose information regarding such violation to a parent or legal guardian of the student. *Id.* at § 1232g(i)(1). Once again, this provision explicitly recognizes that student disciplinary records are education records and therefore are protected from disclosure. In spite of that protection, Congress concluded that a parent, not the general public, had a right to know about such violations.

[16] If Congress believed that student disciplinary records were not education records under the FERPA, then these sections would be superfluous. It is well established that a court must avoid an interpretation of a statutory provision that renders other provisions superfluous. *Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 877, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991). Congress is the appropriate body to address whether student disciplinary records should be open to the public and under what circumstances. Congress has proven through the exemptions discussed above that, when faced with a situation justifying limited student disciplinary record disclosure, it is willing and able to carefully draft a provision permitting such disclosure. Until Congress broadens these exemptions or otherwise alters the clear statutory language, we must conclude that student disciplinary records remain protected under the term "education records." FN14

FN14. If we were unable to determine whether student disciplinary records were education records from the plain language in the statute, we would of course defer to a reasonable agency interpretation of the

issue. In 1995, the DOE made the following conclusion:

> Based on the broad definition of 'education records,' which includes those records, files, documents, and other materials that contain information directly related to a student, except those that are specifically excluded by statute, all disciplinary records, including those related to non-academic or criminal misconduct by students, are 'education records' subject to FERPA.
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> 60 F.R. 3464, 3465 (1995). Given the fact that the DOE reached the same conclusion that we did, we find it to be a well reasoned and permissible construction of the statutory language and we would adopt the DOE's construction.

*814 In addition to the exemptions discussed above, Congress also provided some exceptions to the "education records" definition. Relevant among those exceptions, the term "education records" does not include "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." 20 U.S.C. § 1232g(a)(4)(B)(ii). Because law enforcement records are by definition not education records, the FERPA does not protect law enforcement records or place restriction on their disclosure.

[17] *The Chronicle* notes, without objection, that student disciplinary proceedings can and sometimes do involve serious criminal conduct. Based upon that fact, it argues that student disciplinary records addressing such conduct are law enforcement records and should be disclosed to the public. Faced with this argument and the fact that this provision is somewhat ambiguous, the district court turned to the DOE's regulations for interpretive assistance. We agree with this approach.

In *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), the Supreme Court outlined a two-step procedure to determine Congressional intent in a statute. First, *Chevron* requires courts to determine whether Congress has directly spoken to the precise question at issue. *Id.* at 842-43, 104 S.Ct. 2778. If so, then this panel must give effect to the unambiguously expressed intent of Congress. *Id.* If the statute is silent or ambiguous with respect to the specific issue, this Court must defer to the agency's interpretation as long as it is based on a permissible construction of the statute. *Id.*

[18] We find the following definitions and interpretations to be reasonable and permissible constructions of the relevant statute. "A [l]aw enforcement unit means any ... component of an educational agency or institution ... that is officially authorized or designated by that agency or institution to [e]nforce any local, State, or Federal law ... or [m]aintain the physical security and safety of the agency or institution." 34 C.F.R. § 99.8(a)(1)(i),(ii). "A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student." *Id.* at § 99.8(a)(2). In fact, "[r]ecords created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution" are not records of a law enforcement unit. *Id.* at § 99.8(b)(2)(ii). In addition, "[i]f a law enforcement unit of an institution creates a record for law enforcement purposes and provides a copy of that record to a ... school official for use in a disciplinary proceeding, that copy is an 'education record' subject to FERPA if it is maintained by the ... school official...." 60 F.R. 3464, 3466. Finally, "[e]ducation records ... do not lose their status as education records and remain subject to the Act, including the disclosure provisions ..., while in the possession of the law enforcement unit." 34 C.F.R. at § 99.8(c)(2).

The DOE also defines disciplinary action or proceeding as "the investigation, adjudication,*815 or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution." *Id.* at § 99.3. With these definitions in mind, the DOE states that, "[i]n contrast to law enforcement unit records, the Department has been legally constrained to treat the records of a disciplinary action or proceeding as

'education records' under FERPA (20 U.S.C. 1232g), that is, protected against non-consensual disclosure except in statutorily specified circumstances." 60 F.R. 3464, 3464. Finally, the DOE concludes that "all disciplinary records, including those related to non-academic or criminal misconduct by students, are 'education records' subject to FERPA." 60 F.R. 3464, 3465.

The agency draws a clear distinction between student disciplinary records and law enforcement unit records. The former are protected as "education records" under the FERPA without regard to their content while the latter are excluded from the definition of "education records" and receive no protection by the FERPA. In the records request that gave rise to the underlying suit and this appeal, *The Chronicle* asked Miami and Ohio State to please send "copies of records of all disciplinary proceedings handled by the university's internal judicial system for the calendar years 1995 and 1996." *The Chronicle Requests*, J.A. at 425-26. Even though some of the disciplinary proceedings may have addressed criminal offenses that also constitute violations of the Universities' rules or policies, the records from those proceedings are still protected "education records" within the meaning of the FERPA.[FN15]

> FN15. The holding in *Bauer v. Kincaid*, 759 F.Supp. 575 (W.D.Mo.1991), does not affect this conclusion. Having closely reviewed *Bauer*, we believe that the records sought in that case, criminal investigation and incident records compiled and maintained by the Southwest Missouri State University Safety and Security Department, would likely fall within the *current* law enforcement unit records exception. In fact, the subsequent amendments to the FERPA and its regulations were likely designed to bring the *Bauer* documents clearly within the law enforcement unit records exception. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. § 99.8(a)(1)(i),(ii). It goes without saying, however, that the records sought in *Bauer*, incident and criminal investigation reports gathered and maintained by a campus safety and security department, are entirely different than the records sought by *The Chronicle* in this case, *to wit*, copies of records of all disciplinary proceedings handled by the university's internal judicial system.

F. The Right to Discovery

The Chronicle contends that the district court committed reversible error when it declined to allow discovery in this matter. In its motion to establish an order of procedure, *The Chronicle* asked the district court, pursuant to Fed.R.Civ.P. 56(f), for an order establishing a cut-off date for discovery, a deadline for motions, and a date for an evidentiary hearing. The district court denied this motion, concluding that there were no genuine issues of material fact. We agree.

[19][20] The district court's decision not to permit *The Chronicle* discovery before ruling on the motion for summary judgment and permanent injunction is reviewed by this Court for abuse of discretion. *See Good v. Ohio Edison Co.*, 149 F.3d 413, 422 (6th Cir.1998). An evidentiary hearing typically is required before an injunction may be granted, but a hearing is not necessary where no triable issues of fact are involved. *See United States v. McGee*, 714 F.2d 607, 613 (6th Cir.1983). "This court requires '[a] party invoking [Rule 56(f)] protections [to] do so in good faith by affirmatively demonstrating ... how postponement of a ruling on the motion will enable him, by discovery or ***816** other means, to rebut the movant's showing of the absence of a genuine issue of fact.' " *Good*, 149 F.3d at 422 (citing *Emmons v. McLaughlin*, 874 F.2d 351, 356 (6th Cir.1989) (additional citations omitted)).

[21] *The Chronicle* lists three areas in which permitting discovery could have led to questions of material fact. *The Chronicle* contends that a close review of the UDB proceedings would have shed light on whether any or all of the disciplinary records generated are "education records" or "law enforcement records" within the meaning of FERPA. This question is answered by law not by fact. The Universities and the DOE conceded that some disciplinary proceedings address criminal conduct; through deference to the DOE's rules and regulations, we conclude as a matter of law that such records are education records nonetheless. Next, *The Chronicle* contends that additional discovery would have allowed it to test the DOE's claim of irreparable

harm. As we discuss below, based upon the facts in the record, the harm in releasing student disciplinary records was indeed irreparable and no amount of discovery could possibly change that. The district court did not abuse its discretion in denying discovery. Finally, *The Chronicle* argues that it might have uncovered facts refuting the DOE's claim that criminal statistic availability satisfied *The Chronicle's* First Amendment rights. This information is irrelevant because student disciplinary proceedings are not criminal proceedings. The Constitution does not guarantee any rights to the records relating to student disciplinary proceedings.

The district court was faced with questions of law and additional discovery would not aid in the resolution of those questions. Accordingly, the district court did not abuse its discretion when it denied *The Chronicle's* motion for discovery and a hearing.

G. Injunctive Relief

The district court permanently enjoined the Universities "from releasing student disciplinary records or any 'personally identifiable information' contained therein, as defined in [the] FERPA and its corresponding regulations, except as otherwise expressly permitted under [the] FERPA." *The Chronicle* contends that the DOE failed to establish the necessary prerequisites to secure a permanent injunction. It follows, according to *The Chronicle*, that the district court abused its discretion in granting such extraordinary relief without sufficient support.

[22][23] "In order to obtain either a preliminary or permanent injunction, [a party] must demonstrate that failure to issue the injunction is likely to result in irreparable harm." *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1068 (6th Cir.1998). In addition, the party seeking injunctive relief generally must show that there is no other adequate remedy at law. *See id.* at 1067; *see also Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-320, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982) ("The Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies.") (citations omitted). If injunctive relief is proper, it should be no broader than necessary to remedy the harm at issue. *Kallstrom*, 136 F.3d at 1069.

[24] As an initial matter, the DOE contends that irreparable harm is presumed because the FERPA statutory scheme authorizes the government to obtain injunctive relief to prevent violations. In support of this proposition, the DOE cites *817*CSX Transp., Inc. v. Tennessee State Bd. of Equalization*, 964 F.2d 548, 551 (6th Cir.1992), and other cases from the Eighth and Ninth Circuits. *See, e.g., United States v. Odessa Union*, 833 F.2d 172, 175 (9th Cir.1987); *Burlington Northern R.R. v. Bair*, 957 F.2d 599, 601 (8th Cir.1992). *CSX* held that when:

> Congress has expressly authorized the granting of injunctive relief to halt or prevent a violation of [a statute], traditional equitable criteria do not govern the issuance of preliminary injunctions under [that statute]. In order to issue a preliminary injunction under [the statute], a court must determine only whether there is "reasonable cause" to believe that a violation of [the statute] has occurred or is about to occur.

964 F.2d at 551 (citations omitted). However, the statute in *CSX* "expressly conferred jurisdiction on United States district courts 'to grant such mandatory and prohibitive injunctive relief ... as may be necessary to prevent, restrain, or terminate' any violations of the section." *Id.* at 550.[FN16] The Eighth and Ninth Circuits interpreted identical or similar language.

> FN16. The original section of the statute involved in *CSX* expressly provided for injunctive relief. *See* § 306(2) of the Railroad Revitalization and Regulatory Reform Act of 1976, originally codified at 49 U.S.C. § 26c (1976). When the Act was recodified at 49 U.S.C. § 11503(c), the express authority to enjoin was omitted from the statute, but Congress stated that language changes that occurred during recodification were not intended to be substantive. Therefore, the court held that § 11503(c) still expressly granted "the authority to district courts to issue injunctive relief to prevent or terminate violations." *CSX*, 964 F.2d at 550.

When a recipient of funds fails to comply with the FERPA, Congress permits the Secretary of Education

to "take any ... action authorized by law with respect to the recipient." 20 U.S.C. § 1234c(a)(4). While this provision certainly permits the DOE to bring a cause of action, including, *inter alia,* an action for injunctive relief, it does not expressly authorize the granting of injunctive relief to halt or prevent a violation of the FERPA. *Cf. CSX Transportation, Inc.,* 964 F.2d at 551. Given the assortment of remedies available in the FERPA, Congress by no means foreclosed the exercise of equitable discretion. *Compare Weinberger,* 456 U.S. at 311-320, 102 S.Ct. 1798 (providing a thorough discussion of instances when courts should and should not balance equitable considerations) *with United States v. Szoka,* 260 F.3d 516, 523-24 (6th Cir.2001)(discussing a statute in which Congress foreclosed the exercise of equitable discretion). Accordingly, the "reasonable cause" standard enunciated in *CSX* does not apply to the instant case and we must embrace our traditional role in equity.[FN17]

FN17. Because the statute in this case clearly is distinguishable from the statute in *CSX,* we express no opinion as to the validity of the "reasonable cause standard" in general.

Our first step is to determine whether "failure to issue the injunction is likely to result in irreparable harm." *Kallstrom,* 136 F.3d at 1068. With that in mind, we consider the express purposes of the FERPA as well as the parties and interests involved in this litigation.

[25] One explicit purpose of the FERPA is "to protect [students'] rights to privacy by limiting the transferability of their records without their consent." Joint Statement, 120 Cong. Rec. 39858, 39862 (1974).[FN18] Congress effectuated this purpose by providing that: "No funds shall **818** be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records." 20 U.S.C. § 1232g(b)(2).[FN19] Therefore, the Universities' continued release of student disciplinary records clearly will injure the reputations of the students involved, including the perpetrator, the victim and any witnesses. In addition, the inherent privacy interest that Congress sought to protect will be greatly diminished. Once personally identifiable information has been made public, the harm cannot be undone.

FN18. Ten years before Congress enacted the FERPA, the Supreme Court surmised that "the First Amendment has a penumbra where privacy is protected from governmental intrusion." *Griswold v. Connecticut,* 381 U.S. 479, 482, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). Accordingly, certain student privacy interests are recognized in the FERPA and may find protection in the Constitution.

FN19. As we noted above, this provision creates a binding obligation on schools that accept federal funds not to release education records without consent. The FERPA provisions permit the DOE to enforce this obligation.

[26][27] "When a specific interest and right has been conferred upon the United States by statute, the remedies and procedures for enforcing that right are not to be narrowly construed so as to prevent the effectuation of the policy declared by Congress." *United States v. York,* 398 F.2d 582, 586 (6th Cir.1968). The United States (and the DOE) brought this action to enforce the Universities' guarantees and to protect the privacy interests of the students at those Universities.[FN20] To be sure, ours is a "government of the people, by the people, for the people." A. Lincoln, *Gettysburg Address* (1863) (quoted in *U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779, 821, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995)). It logically follows that if Congress values the privacy interests acknowledged in the Congressional record, and authorizes the DOE to enforce those privacy interests, it must also contemplate that the DOE experiences the irreparable harm suffered by those students whose privacy interests are violated. *See generally United States v. City and County of San Francisco,* 310 U.S. 16, 29-31, 60 S.Ct. 749, 84 L.Ed. 1050 (1940) (interpreting a statute that allowed the United States to enjoin San Francisco, presumably for the benefit of the City's citizens, without requiring the United States to show irreparable harm); *see also Board of Comm'rs of Jackson County v. United States,* 308 U.S. 343, 349, 60 S.Ct. 285, 84 L.Ed. 313 (1939) (recognizing the United States's authority to enforce a treaty and in so

doing, sue on behalf of a Native American who had been improperly taxed by Jackson County, Kansas). Viewing this conclusion in conjunction with the fact that Congress granted the DOE authority to sue, presumably for injunctive relief, to enforce the Universities' obligations under the FERPA, we find that the DOE will suffer irreparable harm if the Universities are not enjoined from releasing the subject student disciplinary records.

> FN20. Congress did not establish individually enforceable rights through the FERPA. *Gonzaga University*, --- U.S. ----, slip op. at 12-1 3, 122 S.Ct. 2268, 536 U.S. 273, at ----, 122 S.Ct. 2268, 153 L.Ed.2d 309, at ----, 2002 WL 1338070, at *9. Instead, Congress acknowledged students' and parents' privacy interests as a whole and empowered the DOE to protect those interests when a University systemically ignores its obligations under the FERPA. *See id. See also* 20 U.S.C. § 1232g (b)(1)-(2), § 1234c (a).

[28] Moreover, millions of people in our society have been or will become students at an educational agency or institution, and those people are the object of FERPA's privacy guarantees. Accordingly, systematic violations of the FERPA provision result in appreciable consequences to the public and no doubt are a matter of public interest. *See Virginian Railway v. System Federation No. 40*, 300 U.S. 515, 552, 57 S.Ct. 592, 81 L.Ed. 789 (1937). In cases involving the public interest as defined or protected by an Act of *819 Congress, courts have long held that equitable discretion "must be exercised in light of the large objectives of the Act. For the standards of the public interest not the requirements of private litigation measure the propriety and need for injunctive relief in these cases." *Hecht*, 321 U.S. at 331, 64 S.Ct. 587. "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Railway*, 300 U.S. at 552, 57 S.Ct. at 601 (citations omitted). Based on this broad grant of equitable discretion, we conclude that the United States must represent the public interests at stake. In light of the noble and broad objectives of the FERPA and the irreparable harm to the public interest, injunctive relief was appropriate in this case.

[29][30] *The Chronicle* also argues that 20 U.S.C. § 1232a prevents the district court's injunction. In sum, the statute states that no provision "shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over ... any educational school system." *Id.* "[T]his concern was directed primarily at the possibility of [DOE's] assuming the role of a national school board," but it may also apply if a federal court plays "an overly active role in supervising" a state's expenditures of federal funding. *Wheeler v. Barrera*, 417 U.S. at 416-19, 94 S.Ct. 2274; *see also Crawford v. Pittman*, 708 F.2d 1028, 1036 (5th Cir.1983). The district court does not take an overly active role in the Universities' function and the injunction does not involve supervision of a state's expenditures. "Our decision requires only that [the Universities] fulfill the contract[s] [they] made when [they] chose to receive federal moneys under the Act." *Crawford*, 708 F.2d at 1036. We reject *The Chronicle's* argument under § 1232a.

Based upon the foregoing analysis, we hold that continued release of student disciplinary records will irreparably harm the United States and the DOE. Before a permanent injunction issues, however, we must determine whether there is any other adequate remedy at law. *Kallstrom*, 136 F.3d at 1067. *The Chronicle* contends that money damages or administrative remedies will satisfy the injuries suffered by the DOE. Even if equitable relief is appropriate, *The Chronicle* believes that the district court's blanket injunction is too broad.

[31] "[A]n injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate." *Basicomputer Corp.*, 973 F.2d at 511. In general, a loss of privacy and injury to reputation are difficult to calculate. These difficulties are compounded by the fact that the DOE or *The Chronicle* have no way of knowing how many people would require compensation and how much money would compensate each injury. Moreover, we have already concluded that the harm suffered by the myriad number of students affected by the continued release of student disciplinary records is irreparable, and by definition, not compensable. Accordingly, money damages are

insufficient relief.

[32] Second, none of the administrative remedies authorized by the FERPA would stop the violations. The Ohio Supreme Court's decision in *Miami* serves as precedent to compel Miami and Ohio State to release student disciplinary records in the absence of a federal court injunction. Thus, it would be nearly impossible to obtain voluntary compliance under 20 U.S.C. § 1234c(a)(3). Cutting off federal funding under 20 U.S.C. § 1234c(a)(1) would be detrimental to the Universities' educational purpose and would injure more students than it would protect. Furthermore,*820 it would not guarantee compliance with the purpose of the FERPA because the defendants would still feel constrained to follow the Ohio Supreme Court's interpretation of the Act.

[33] Next, a cease and desist order under 20 U.S.C. § 1234c(a)(2) is inadequate for two reasons. First, it requires new enforcement measures each time a violation occurs. Second, as the district court noted, a cease and desist order is not self-executing-it can only be enforced by withholding funds or by referring the matter to the Attorney General for enforcement. We have already noted that withholding funds is inadequate and piecemeal enforcement leads to intermittent violative releases that would otherwise be protected by permanent injunctive relief. Having balanced the alternatives, the district court's permanent injunction was not an abuse of discretion.

[34] Finally, *The Chronicle* contends that the district court's injunction was too broad. Courts regularly have afforded much more invasive relief, with less consideration, as a result of state violations of spending conditions. *See, e.g., King*, 392 U.S. at 332-33, 88 S.Ct. 2128 (striking a state regulation as invalid because it defined a term in a manner that was inconsistent with the spending clause condition); *Townsend v. Swank*, 404 U.S. 282, 285-86, 92 S.Ct. 502, 30 L.Ed.2d 448 (1971) (striking a state statute without even addressing the form of relief); *Rosado v. Wyman*, 397 U.S. 397, 420-22, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970) (enjoining the release of federal welfare funds). Over the years, courts have expressed a reluctance to require states to expend a great deal of their own revenue to comply with federal spending conditions, *see Rosado*, 397 U.S. at 421, 90 S.Ct. 1207, and have declined to enforce open-ended and potentially burdensome obligations, *see Pennhurst State School and Hospital*, 451 U.S. at 29, 101 S.Ct. 1531. Instead, courts generally seem to prefer prospective relief like the permanent injunction issued in this case. *See id.* Because this injunction is crafted to protect the privacy interests embodied in the FERPA, and is narrowly tailored to enjoin only the release of student disciplinary records or any personally identifiable information contained therein, except as otherwise expressly permitted under the FERPA, we conclude that the district court did not abuse its discretion in granting such relief.[FN21]

> FN21. We note that if Congress changes the definition of "education records" or otherwise alters the balance struck in the FERPA such that a different interpretation of student disciplinary records must be reached, or the DOE changes its interpretation of law enforcement unit records, *The Chronicle* or the Universities may move the district court to lift the injunction. Moreover, if the Universities choose to discontinue their receipt of federal education funds, then they may also move the court to lift the injunction and release student disciplinary records to the extent authorized by law.

H. The First Amendment

[35] *The Chronicle* contends that there is a First Amendment right of access to student disciplinary records detailing criminal activities and punishment. To the extent that the permanent injunction limits access to those documents, *The Chronicle* argues that it constitutes a violation of *The Chronicle's* First Amendment rights.

[36] "It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." *Branzburg v. Hayes*, 408 U.S. 665, 684-85, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972). Moreover, "[t]he Constitution itself is [not] a Freedom of Information Act," permitting the release of government records at the will of the public. *821 *Houchins v. KQED, Inc.*, 438 U.S. 1, 14, 98 S.Ct. 2588, 57 L.Ed.2d 553 (1978). "Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information

within the government's control." *Id.* at 15, 98 S.Ct. 2588.

[37] That being said, the Supreme Court repeatedly has recognized a First Amendment right of access to criminal trials, proceedings, and records. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 580, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) ("the right to attend criminal trials is implicit in the guarantees of the First Amendment").[FN22] As the Supreme Court explained, a qualified right of access attaches where (1) the information sought has "historically been open to the press and general public"; and (2) "public access plays a significant positive role in the functioning of the particular process in question[.]" *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1, 8, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) (applying this test and recognizing a qualified right of access to a preliminary hearing transcript in a criminal matter). Once the qualified First Amendment right of access attaches, it can "be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise Co. v. Superior Court (Press-Enterprise I)*, 464 U.S. 501, 510, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984). "The right of access is not absolute, however, despite these justifications for the open courtroom." *Brown & Williamson Tobacco Corp.*, 710 F.2d at 1179.

FN22. In the heat of these landmark Supreme Court decisions, this Court concluded that "[t]he Supreme Court's analysis of the justifications for access to the criminal courtroom apply as well to the civil trial." *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1178 (6th Cir.1983) (vacating the lower court's order to seal certain F.T.C. documents filed in the court's record during a preenforcement challenge to proposed changes in cigarette testing) (citing *Richmond Newspapers*, 448 U.S. at 580 n. 17, 100 S.Ct. 2814 (noting that historically civil trials have been presumptively open, but declining to decide whether they enjoy a First Amendment right of access because the issue was not before the Court)), *cert. denied*, 465 U.S. 1100, 104 S.Ct. 1595, 80 L.Ed.2d 127 (1984). *See, e.g., Smith v. United States Dist. Court*, 956 F.2d 647, 650 (7th Cir.1992) (recognizing a right of access to civil proceedings).

From the outset, *The Chronicle* colors certain student disciplinary proceedings as criminal proceedings. First, *The Chronicle* notes that university disciplinary boards adjudicate various infractions of student rules and regulations which may include: underage drinking; physical and sexual assault; and theft and destruction of property. It then contends that, by hearing these cases, the university disciplinary boards interfere with the traditional criminal prosecutions that would otherwise remedy this criminal behavior. If these cases were instead handled through traditional criminal prosecutions, *The Chronicle* argues, then the First Amendment would undeniably require access to the underlying criminal trials, proceedings and records. That these ostensibly criminal activities are dressed up as student rule infractions does not change the fact that student disciplinary boards are adjudicating criminal matters, and those criminal matters have historically enjoyed open access to the press and general public.

In drawing these conclusions, *The Chronicle* omits a few important facts. University disciplinary proceedings are not criminal proceedings despite the fact that some behavior that violates a university's rules and regulations may also constitute a crime. For many reasons, student disciplinary proceedings do not "afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting*822 the charge, or to call his own witnesses to verify his version of the incident." *Goss v. Lopez*, 419 U.S. 565, 583, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). Not only are students often denied the procedural due process protections cherished by our judicial system, they are also denied procedural finality. The protections against "double jeopardy" do not attach to university disciplinary proceedings; therefore, as the Ohio State and Miami student handbooks explain, a student may be disciplined or sanctioned by the Universities and still be subject to local, state or federal criminal prosecution for the same offense.[FN23] This is true because student disciplinary proceedings govern the relationship between a student and his or her university, not the relationship between a citizen and "The People." Only the latter presumptively implicates a qualified First Amendment right of access to the proceedings and the records. *See*

Richmond Newspapers, 448 U.S. at 580, 100 S.Ct. 2814; *Press Enterprise II*, 478 U.S. at 8, 106 S.Ct. 2735.

> FN23. *Code of Student Conduct*, Miami University, 3, J.A. 524; *Code of Student Conduct*, The Ohio State University, 85, J.A. 546. "Students are also advised that a disciplinary action by the University does not preclude the possibility that a separate criminal or civil prosecution may also follow, and that, conversely, questionable conduct in the non-University community may be grounds for the University's taking action as well." *Miami University Disciplinary Procedures*, originally submitted by *The Chronicle's* counsel in the *Miami* Ohio Supreme Court mandamus action, Tab 2, Exhibit 13, J.A. 175. The Miami University Disciplinary Board Summary occasionally reflects this mutuality. *See, e.g.*; Tab 2, Exhibit 14, J.A. 177, 178, 179, 184.

In *Cincinnati Gas and Elec. Co. v. General Elec. Co.*, the district court ordered the parties to participate in a summary jury trial which was to be closed to the press and the public. 854 F.2d 900, 901-02 (6th Cir.1988), *cert. denied*, 489 U.S. 1033, 109 S.Ct. 1171, 103 L.Ed.2d 229 (1989). Various newspapers moved to intervene for the limited purpose of challenging closure of the summary jury trial proceeding. *Id.* at 902. The district court denied the newspapers' motion and the newspapers appealed. On appeal, the newspapers argued, *inter alia*, that "the summary jury proceeding is analogous in form and function to a civil or criminal trial on the merits, and therefore, the First Amendment right of access which encompasses civil and criminal trial ... proceedings also encompasses the summary jury proceedings." *Id.* at 902. Rejecting the analogy, this Court pointed to the "manifold differences" between summary jury proceedings and a "real trial." *Id.* at 904. In addition to several procedural differences similar to those in the case *sub judice*, the Court found it "important to note that the summary jury trial does not present any matter for adjudication *by the court*," despite the fact that the district court judge ordered the proceeding which takes place in a federal courthouse and is overseen by a federal judge. *Id.*; *see also In re Cincinnati Enquirer*, 94 F.3d 198 (6th Cir.1996), *cert. denied*, 520 U.S. 1104, 117 S.Ct. 1107, 137 L.Ed.2d 309 (1997).

Similarly, while student disciplinary proceedings may resemble a criminal trial in some limited respects and while certain university rule and regulation violations may also constitute criminal behavior, student disciplinary proceedings do not present matters for adjudication by a court of law. *See First Amendment Coalition v. Judicial Inquiry and Review Board*, 784 F.2d 467, 471-77 (3d Cir.1986) (*en banc*) (denying right of access to judicial disciplinary proceedings and records unless the records subsequently are filed in a court of law); *Jessup v. Luther*, 277 F.3d 926, 928-29 (7th Cir.2002) (noting that settlement agreements and arbitrations are private ***823** documents subject to a right of access only when filed in the court record); *United States v. El-Sayegh*, 131 F.3d 158, 162-63 (D.C.Cir.1997) (holding that there is no First Amendment or common law right of access to documents which played no role in a judicial decision). Therefore, we decline to evaluate student disciplinary proceedings with the same deferential eye toward First Amendment access as we would government criminal proceedings.

With that in mind, we turn to the two-part test applied by courts when determining whether a qualified First Amendment right of access attaches in a particular situation. First, we must consider whether student disciplinary proceedings and records "historically [have] been open to the press and general public." *Press-Enterprise II*, 478 U.S. at 8, 106 S.Ct. 2735.The question is as easily answered as it is raised. Student disciplinary proceedings have never been open to the public and until the Ohio Supreme Court decision in *Miami*, they were presumed to be protected by the FERPA. This conclusion is supported by the fact that *The Chronicle* filed its record request with the Universities a mere five days after the Ohio Supreme Court concluded that student disciplinary records were not "education records" within the meaning of the FERPA. Moreover, if student disciplinary proceedings were historically open to the public, then a request "for records of all disciplinary proceedings handled by the university's internal judicial system for calendar years 1995 and 1996" would not have sparked so much controversy. Clearly student disciplinary proceedings do not satisfy the first prong of the test. *See First*

Amendment Coalition, 784 F.2d at 471-77.

In addition, "public access [does not] play[ ] a significant positive role in the functioning of the particular process in question[.]" *Press-Enterprise II*, 478 U.S. at 8, 106 S.Ct. 2735.A university is an "academic institution, not a courtroom or administrative hearing room." *Board of Curators v. Horowitz*, 435 U.S. 78, 88, 98 S.Ct. 948, 55 L.Ed.2d 124 (1977). As we noted earlier, student disciplinary proceedings exclusively affect the relationship between a particular student and the university. Not only do the rules, regulations and proceedings define the terms of that relationship, they also serve as an effective part of the teaching process. *See Goss*, 419 U.S. at 583, 95 S.Ct. 729. Public access will not enhance this relational determination, nor will it aid in the student's education. In fact, due to inevitably heightened public scrutiny, public access to disciplinary proceedings may force universities to afford students more procedural due process protections than are required by the Constitution. As the Supreme Court noted, enhanced procedural requirements "may not only make [student disciplinary proceedings] too costly as a regular disciplinary tool but [it may] also destroy [the proceedings'] effectiveness as part of the teaching process." *Id.* We find that public access will not aid in the functioning of traditionally closed student disciplinary proceedings; accordingly, *The Chronicle* does not enjoy a qualified First Amendment right of access to such proceedings.[FN24]

FN24. Even if a qualified First Amendment right of access attached to these proceedings, which it clearly does not, the common law recognizes various exceptions to the right of access including certain privacy rights of participants or third parties. *Brown & Williamson Tobacco Corp.*, 710 F.2d at 1179 (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978)). These privacy rights are of particular import when recognized and protected by federal statutory provisions like the FERPA. *See In re The Knoxville News-Sentinel Co., Inc.*, 723 F.2d 470, 476 (6th Cir.1983) (holding that it was appropriate to seal banking records when Congress clearly mandated the privacy of those records).

*824 Finally, a denial of access to student disciplinary records does not prevent *The Chronicle* from obtaining information about crime on university campuses. Pursuant to the district court's injunction, *The Chronicle* may still request student disciplinary records that do not contain personally identifiable information. Nothing in the FERPA would prevent the Universities from releasing properly redacted records. In addition, the Student Right-to-Know and Campus Security Act requires universities to publish statistics concerning the occurrence of various campus crimes including: murder; sex offenses (forcible or nonforcible); violent hate crimes; robbery; burglary; motor vehicle theft; aggravated assault; arson; weapons violations; liquor-law violations; and drug related violations. *See*20 U.S.C. § 1092(f)(1)(F). *The Chronicle* indeed has access to student disciplinary records and crime related statistics, just not the unfettered access it hoped to secure.

III. CONCLUSION

Because the district court's grant of summary judgment was consistent with legal precedent and sound statutory interpretation, and because the district court did not abuse its discretion in denying discovery or granting a permanent injunction, we AFFIRM.

C.A.6 (Ohio),2002.
U.S. v. Miami University
294 F.3d 797, 166 Ed. Law Rep. 464, 30 Media L. Rep. 2057, 2002 Fed.App. 0213P

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CJOHN D. YOUNG, Plaintiff and Appellant,
v.
RICHARD GANNON, as Director, etc., et al., Defendants and Respondents; DEPARTMENT OF INDUSTRIAL RELATIONS, Real Party in Interest and Respondent.
No. B146236.

Court of Appeal, Second District, Division 1, California.
Feb. 27, 2002.

SUMMARY

The trial court denied a petition for a writ of administrative mandate brought against the State Personnel Board by a former workers' compensation judge (WCJ), seeking to have the board set aside its decision upholding his termination, and to order the Department of Industrial Relations, Division of Workers' Compensation, to reinstate and compensate him. He had been dismissed for incompetence, neglect of duty, dishonesty, and unlawful discrimination, including harassment, based upon his falsification of affidavits, deficient productivity, and inappropriate behavior with two attorneys who had appeared before him. While he had been instructed by his supervisor that the rule under which a WCJ may not receive a salary if any cause is not filed in the record within 90 days (Lab. Code, § 123.5, subd. (a)) required that the decision be typed, signed, and officially filed within that time period, he believed that giving his secretary a handwritten decision within 90 days met the requirement, and he executed affidavits according to this belief. Plaintiff also petitioned for a writ of mandate against the administrative director of the division, seeking to compel him to repeal the regulations adopted to enforce Lab. Code, § 123.6 (ethical obligations of WCJ's), and to adopt regulations consistent with procedures established by the Commission on Judicial Performance for regulating judges' activities. In this second cause, the trial court sustained defendant's demurrer without leave to amend and denied the petition. (Superior Court of Los Angeles County, No. BS061675, Dzintra I. Janavs, Judge.)

The Court of Appeal affirmed. The court held that the trial court properly sustained the director's demurrer to plaintiff's petition for a writ of mandate, since the regulations adopted by the director were within the scope of the authority conferred and were reasonably necessary to effectuate the purpose of the statute. The court also held that the trial court did not err in denying plaintiff's petition for a writ of administrative mandate, since plaintiff's testimony presented a factual determination for the trier of fact and substantial evidence supported the board's finding that plaintiff acted dishonestly. (Opinion by Spencer, P. J., with Ortega and Mallano, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Workers' Compensation § 5--Judges--Ethical Obligations-- Implementing Regulations:Judges § 6--Removal.
The trial court properly sustained a demurrer to a terminated workers' compensation judge's (WCJ) petition for a writ of mandate against the administrative director of the Department of Industrial Relations, Division of Workers' Compensation, seeking to compel the director to repeal the regulations adopted to enforce Lab. Code, § 123.6 (ethical obligations of WCJ's), and to adopt regulations consistent with procedures established by the Commission on Judicial Performance for regulating judges' activities. The regulations adopted by the director were within the scope of the authority conferred and were reasonably necessary to effectuate the purpose of the statute. The director was not obliged to adopt regulations that provided exactly the same disciplinary procedures as those applied to state judges. The broad language of § 123.6 must be construed to afford the director considerable discretion in adopting regulations that give effect to the Legislature's intent without negating the provisions of the Civil Service Act applicable to WCJ's as civil service employees. Further, the intent of the Legislature was to address problems of corruption and misconduct and limited training of WCJ's, and not to protect the procedural rights of WCJ's. The requirement in § 123.6 that the regulations be consistent with rules applicable to state judges must be read in this light. Hence, plaintiff

failed to demonstrate that he was entitled the relief he sought.
[See 2 Witkin, Summary of Cal. Law (9th ed. 1987) Workers' Compensation, §§ 20, 392, 393; West's Key Digest System, Workers' Compensation 1082, Workers' Compensation 1092.]
(2) Appellate Review § 128--Scope of Review--Function of Appellate Court-- Rulings on Demurrers.
In determining, on a demurrer, whether a complaint states facts sufficient to constitute a cause of action, the trial court may consider all material facts pleaded in the complaint and those arising by reasonable implication from those facts; it may not consider contentions, deductions, or conclusions of fact or law. A demurrer should not be sustained without leave to amend if the complaint, liberally construed, can state a cause of action under any theory or if there is a reasonable possibility the defect can be cured by amendment. On appeal, the appellate court reviews the trial court's sustaining of a demurrer without leave to amend de novo, exercising its independent judgment as to whether a cause of action has been stated as a matter of law and applying the abuse of discretion standard in reviewing the trial court's denial of leave to amend. The plaintiff bears the burden of proving that the trial court erred in sustaining a demurrer or abused its discretion in denying leave to amend.

(3) Mandamus and Prohibition § 21--Mandamus--To Public Officers and Boards.
Mandamus is an appropriate means for compelling a public official to perform an official act that is required by law. It generally will lie only to compel the public official's performance of a duty that is purely ministerial in nature. Where a public official is required by law to exercise his or her discretion, mandamus will lie to compel the official to exercise his or her discretion under a proper interpretation of the law. It will not lie to compel the public official to exercise his or her discretion in a particular manner, however. Mandamus is available to correct those acts and decisions of administrative agencies that are in violation of law.

(4) Administrative Law § 35--Administrative Actions--Effect and Validity of Rules and Regulations--Categories of Administrative Rules--Scope of Judicial Review.
Rules adopted by an administrative agency fall into one of two categories: quasi-legislative or interpretive. Quasi-legislative rules are those adopted by an administrative agency pursuant to a delegation of legislative power, and they have the dignity of statutes. Thus, the scope of judicial review of these rules is narrow. Once the court is satisfied that the rule in question is executed under the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end. These issues do not present a matter for the independent judgment of an appellate tribunal, but rather come to the reviewing court with a strong presumption of regularity. The appellate court's inquiry necessarily is confined to the question whether the classification is arbitrary, capricious, or without reasonable or rational basis. The reviewing court does not, however, defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has final responsibility for the interpretation of the law under which the regulation was issued.

(5) Statutes § 29--Construction--Language--Legislative Intent.
In the construction of statutes, the primary goal of the court is to ascertain and give effect to the intent of the Legislature. The court looks first to the language of the statute; if clear and unambiguous, the court will give effect to its plain meaning. The court turns first to the words themselves, giving them their usual, ordinary meanings and, if possible, giving significance to each word and phrase. The words of a statute must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. Words and phrases are construed in light of the statutory scheme. They will not be construed in such a way as to render related provisions nugatory. In enacting a statute, the Legislature is deemed to have been aware of statutes already in effect, and judicial decisions interpreting them, and to have enacted the statute in light of them. Moreover, the legislative history of a statute is a legitimate and valuable aid in its interpretation.

(6a, 6b) Workers' Compensation § 5--Judges--90-day Limit for Filing of Causes:Judges § 6--Removal.
The trial court did not err in denying a petition for a writ of administrative mandate brought against the State Personnel Board by a former workers' compensation judge (WCJ), seeking to have the

board set aside its decision upholding his termination, and to order the Department of Industrial Relations, Division of Workers' Compensation, to reinstate and compensate him. He had been dismissed for incompetence, neglect of duty, dishonesty, and unlawful discrimination, including harassment, based upon his falsification of affidavits, deficient productivity, and inappropriate behavior with two attorneys who had appeared before him. While he had been instructed by his supervisor that the rule under which a WCJ may not receive a salary if any cause is not filed in the record within 90 days (Lab. Code, § 123.5, subd. (a)) required that the decision be typed, signed, and officially filed within that time period, he believed that giving his secretary a handwritten decision within 90 days met the requirement, and executed affidavits according to this belief. Plaintiff's testimony presented a factual determination for the trier of fact. It was for the board to determine, based on the former WCJ's testimony and other evidence, whether he honestly believed he was in compliance with the 90-day rule, or whether he was being dishonest. Under these facts, substantial evidence supported the board's finding that plaintiff acted dishonestly when he signed the affidavits.

(7) Administrative Law § 138--Judicial Review and Relief--Administrative Mandamus--Appellate Review--Scope and Extent.
In reviewing a trial court's determination on a petition for a writ of administrative mandate, the duty of the appellate court is to determine whether the administrative agency's decision was supported by the findings and the findings by substantial evidence or whether the agency abused its discretion by failing to proceed in the manner required by law. In making a determination, the reviewing court examines all relevant evidence in the entire administrative record. The appellate court views the evidence in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all inferences in support of the judgment. Substantial evidence to support the judgment in this context is defined as evidence of ponderable legal significance, reasonable in nature, credible, and of solid value, and relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The reviewing court presumes that the agency regularly performed its duty. The burden is on the appellant to prove an abuse of discretion by the agency in failing to proceed in the manner required by law or in making a decision unsupported by substantial evidence.

COUNSEL
Spiro Moss Barness & Harrison and Dennis F. Moss for Plaintiff and Appellant.
John M. Rea, Vanessa L. Holton, Frank Nelson Adkins and Sarah L. Cohen for Defendant and Respondent Richard Gannon and for Real Party in Interest and Respondent.
No appearance for Defendant and Respondent State Personnel Board.
SPENCER, P. J.

Introduction

John D. Young appeals from a judgment denying his petition for writ of mandate. We affirm the judgment.

Statement of Facts

Appellant's Termination as a Workers' Compensation Judge

Appellant was appointed to be a Workers' Compensation Judge (WCJ) for the Workers' Compensation Appeals Board (WCAB). In June 1994, he attended new judges' training, which included presentations on the timeliness of decisions. Thereafter, in at least two quarterly trainings, he received *214 instruction on the 90-day rule. Under this rule, a WCJ may not receive his or her salary while any cause remains pending and undetermined for 90 days after submission. At the end of a pay period, a WCJ must sign and submit an affidavit under penalty of perjury, that to the best of his or her belief, no cause remains pending and undetermined that was submitted 90 days prior to the first day of the next pay period. [FN1]

FN1 Labor Code section 123.5, subdivision (a), which codifies the 90-day rule, provides: "A workers' compensation judge may not receive his or her salary as a workers' compensation judge while any cause before the workers' compensation judge remains pending and undetermined for 90 days after it has been submitted for decision." California Code of Regulations, title 8, section 9714, provides the procedures for compliance with the 90-day rule. Specifically, it provides in subdivision (a)

> that "[i]n order to receive his or her salary for each pay period, at some time before 5:00 p.m. on the last working day of each State payroll period, the Workers' Compensation Administrative Law Judge shall submit to the Division of Workers' Compensation an affidavit based upon information and belief in the form prescribed by Section 9714.5, and executed under penalty of perjury, declaring that no cause submitted before him or her remains pending and undetermined for a period of ninety (90) days or more."

In the fall of 1997, appellant's supervisor, Presiding WCJ Barbara Burke (Burke), met with him after reviewing a statistical report showing that he had been delinquent in completing his decisions. They discussed the term "filed in the record" within the context of the 90-day rule. [FN2] Appellant expressed his belief that giving his secretary a handwritten decision met the requirement that the decision be "filed in the record." Burke explained that he was incorrect; a decision was not "filed in the record" until it was typed, signed and officially filed in the record. Appellant responded that there was a difference of opinion. Burke reminded him of the correct meaning of the term and told him he would be held accountable for acting in accord with his belief.

> FN2 A decision is " '[p]ending and [u]ndetermined' " within the context of the 90-day rule if it "has not been filed in the record." (Cal. Code Regs., tit. 8, § 9712, subd. (c).)

Appellant's practice was to maintain a log in which he entered the date on which he wrote a handwritten decision and the date he signed a typed decision. To him, a decision was "filed in the record" when he wrote the handwritten decision, attached it to the case file and gave the decision and file to his secretary.

During the time period at issue herein, appellant executed eight affidavits stating under penalty of perjury that he had no causes pending and undetermined older than 90 days when, in fact, he had causes older than 90 days, in which no decision had been "filed in the record." [FN3]*215

> FN3 The State Personnel Board and the trial court found that even under appellant's definition of "filed in the record," five of the affidavits were executed when appellant had causes older than 90 days pending and undetermined. The record shows that at the time appellant executed the five affidavits, he had causes older than 90 days pending and undetermined. The affidavits were postdated, however. He gave the handwritten decisions to his secretary *after* executing the affidavits but *before* the dates on the affidavits. For this reason, appellant disagrees with the findings of the State Personnel Board and the trial court.

Appellant also engaged in inappropriate conduct toward two female attorneys who appeared before him. State Compensation Insurance Fund Attorney Nona Rentzer (Rentzer) appeared in WCAB cases before appellant from July through September 1996. Appellant was interested in pursuing a relationship with her. In July 1996, he asked Rentzer to come into his chambers during a conference. For 30 to 40 minutes, while the other attorneys involved in the conference waited, he engaged her in a personal conversation. As she was leaving his chambers, he gave her a card with his telephone number on it and invited her to lunch and the shooting range. Thereafter, he telephoned her at least half a dozen times, sent her greeting cards and sought her out when she had appearances before the WCAB. Appellant's conduct made Rentzer uncomfortable. She was afraid, however, that if she did anything to anger him he would harm her.

Appellant had been trained in disclosure requirements and recusal obligations as well as judicial ethics. Despite his training, he did not recuse himself from cases in which Rentzer was appearing. Neither did he disclose to the parties that he had a personal interest in Rentzer. He attempted to justify his behavior by stating that Rentzer's appearances before him were at "uncontested" settlement conferences, even though adversarial parties were involved in those settlement conferences. Appellant's conduct was persistent and conveyed an appearance of impropriety.

From June 1996 through September 1997, Marcia Donald (Donald), an attorney for CIGNA, appeared in WCAB cases before appellant one to five times a

month. Appellant initiated a personal relationship with her, although it never progressed beyond friendship. They frequently went to lunch together, and they went out together on a day neither had to work. Appellant sent Donald at least eight greeting cards and notes, in which he thanked her for her company and invited her to various activities and social events. Appellant also telephoned Donald at her office and home, sometimes as often as three or four times a week.

Early in the summer of 1997, Donald told appellant that she did not want to pursue a relationship with him for fear of losing her job and because of the appearance of impropriety. Appellant persisted in inviting her to lunch. She agreed to go only if they were part of a group. In September 1997, Donald agreed to allow appellant to join her and another attorney for lunch. When the other attorney failed to appear, Donald had lunch with appellant *216 alone. She felt pressured to do so because appellant was a judge before whom she appeared, and she did not want to anger or upset him. After the lunch, appellant's telephone calls to Donald increased in frequency, and he left messages for her at her office and home. Finally, in October 1997, Donald told appellant he was no longer to telephone her, send her cards or go to lunch with her. During the time that appellant had a personal relationship with Donald, he did not recuse himself from any cases in which she appeared or disclose their relationship to the other parties.

Appellant was dismissed from his position effective September 29, 1998. This was accomplished by a notice of adverse action from the Department of Industrial Relations, Division of Workers' Compensation. (Gov. Code, § 19574.)According to the notice of adverse action, appellant was being dismissed for incompetence, inefficiency, inexcusable neglect of duty, dishonesty, discourteous treatment of others, misuse of state property, other failure of good behavior and unlawful discrimination, including harassment. (*Id.*, § 19572, subds. (b), (c), (d), (f), (m), (p), (t), (w).) This was based upon his falsification of affidavits, deficient productivity, and inappropriate behavior with Rentzer and Donald.

On December 15, 1998, appellant filed a written motion to dismiss the notice of adverse action on the ground the administrative director of the Division of Workers' Compensation of the Department of Industrial Relations (administrative director) had failed to adopt regulations required by Labor Code section 123.6. [FN4] Under such regulations, he would be entitled to have a body such as the Commission on Judicial Performance conduct an investigation and provide him with a hearing prior to his dismissal.

> FN4 Labor Code section 123.6, subdivision (a), provides: "All workers' compensation administrative law judges employed by the administrative director shall subscribe to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code. [¶] The administrative director shall adopt regulations to enforce this section. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code)."

Appellant's motion to dismiss was heard in late 1998 and early 1999 by an administrative law judge (ALJ). On April 26, 1999, the ALJ issued a proposed decision denying the motion to dismiss.

Appellant appealed the ALJ's proposed decision to the State Personnel Board (Board). The Board rejected the ALJ's proposed decision, resolving to decide the case itself. *217

The Board issued its decision on October 5-6, 1999. A majority of the Board concluded "that appellant was dishonest on several occasions when he signed affidavits declaring that he had no cases pending for over 90 days. A majority of the Board also [found] that, while appellant's conduct toward two female attorneys did not constitute sexual harassment under Government Code section 19572(w), it was extremely inappropriate and constituted cause for discipline. Therefore, a majority of the Board conclude[d] that dismissal [was] the just and proper

penalty for the proven misconduct."

Ethical Standards for WCJ's

In 1993, the Legislature amended Labor Code section 123.6 to require the administrative director to adopt regulations to enforce that section. The impetus for this amendment was allegations of corruption and misconduct among WCJ's in Southern California which were under investigation by the Department of Industrial Relations. Another concern was "limited and sporadic" training for WCJ's. (Assem. Fin. & Ins. Com., Analysis of Assem. Bill No. 1252 (1993-1994 Reg. Sess.) Aug. 24, 1993.)

Pursuant to the mandate of Labor Code section 123.6, the then administrative director adopted regulations governing the ethical standards of WCJ's, title 8, chapter 4.5, subchapter 1, article 1.6 of the California Code of Regulations, section 9720.1 et seq., effective December 1, 1995. They require WCJ's to abide by the Code of Judicial Conduct and other regulations. (*Id.*, §§ 9721.1-9721.32.) They also create a Workers' Compensation Ethics Advisory Committee (Committee) to receive complaints against WCJ's, forward the complaints to the administrative director with recommendations as to whether or not they should be investigated, monitor the outcome of the complaints, and report on the integrity of the workers' compensation adjudicatory process. (*Id.*, § 9722.) The Committee is to consist of nine members appointed by the administrative director including: three members of the public representing organized labor, insurers and self-insured employers; two attorneys who formerly practiced before the WCAB and represented employers and applicants; a presiding WCJ, a current or retired WCJ; two members of the public outside the workers' compensation system. (*Ibid.*)

Under the regulations, complaints may be filed with the Committee. (Cal. Code Regs., tit. 8, § 9722.1, subd. (a).) The Committee reviews the complaint and "may make brief, informal inquiries to obtain information needed to clarify the complaint." (*Id.*, subd. (b).) The Committee then forwards the complaint to the administrative director with a recommendation to proceed or not to proceed with the complaint. (*Id.*, subds. (c), (d).) ***218**

Once the administrative director receives the complaint, he or she shall conduct an investigation to determine whether the WCJ has engaged in misconduct. (Cal. Code Regs., tit. 8, § 9722.2, subd. (a).) During the course of the investigation, the administrative director shall inform the WCJ of the nature of the charges, and the WCJ shall be given the opportunity to submit a response. (*Id.*, § 9722.1, subd. (f).) If the administrative director determines that there has been misconduct, he or she shall take appropriate disciplinary action against the WCJ. (*Id.*, § 9722.2, subd. (c).)

WCJ's are state employees covered by the civil service system. (Cal. Const., art. VII, § 1; Lab. Code, § 123.5, subd. (a).) They are employed by the administrative director, who is responsible for personnel matters. (Lab. Code, §§ 111, subd. (a), 123.5, subd. (a).) A WCJ disciplined under the regulations retains the procedural rights provided under the State Civil Service Act. (Cal. Code Regs., tit. 8, § 9723, subd. (a).)

By contrast, state court judges are judicial officers, appointed by the governor or elected. (Cal. Const., art. VI, § 16.) They are subject to discipline by the Commission on Judicial Performance (Commission). (*Id.*, § 18.) The Commission consists of 11 members: 3 judges, appointed by the Supreme Court; 2 members of the State Bar, appointed by the Governor; and 6 members of the public, 2 appointed by the Governor, 2 by the Senate Committee of Rules, and 2 by the Speaker of the Assembly. (*Id.*, § 8.)

Under the Commission's rules, when a written complaint is received by the Commission, the Commission may dismiss the proceeding, make an inquiry to determine whether a preliminary investigation is warranted, or make a preliminary investigation to determine whether to institute formal proceedings and hold a hearing. (Rules of Com. on Jud. Performance, rule 109(a).) If an inquiry or a preliminary investigation is commenced, the judge must be notified and be given the opportunity to respond. (*Id.*, rules 110(a), 111(a).) If the results of the inquiry or preliminary investigation warrant it, the Commission may terminate the inquiry or preliminary investigation. (*Id.*, rules 110(b), 111(b).) The Commission also may defer termination of the preliminary investigation in order to monitor the judge's conduct. (*Id.*, rule 112.) The judge has the

right to be represented by counsel during all proceedings.(*Id.*, rule 106.)

Based upon the results of the preliminary investigation, the Commission may issue the judge a notice of intended private or public admonishment. (Rules of Com. on Jud. Performance, rules 113, 115.) The judge has the opportunity to accept the intended admonishment, to object, appear before the Commission and contest the intended action, or to demand formal proceedings. (*Id.*, rules 114, 116.) *219

Formal proceedings must be noticed. (Rules of Com. on Jud. Performance, rule 118.) The judge is given the opportunity to file an answer. (*Id.*, rule 119.) Discovery is permitted. (*Id.*, rule 122.) The Commission may hear the matter itself or request that the Supreme Court appoint special masters to hear the matter and report to the Commission. (*Id.*, rule 121.) At the hearing, the rules of evidence apply (*id.*, rule 125), witnesses may be subpoenaed and the judge may cross-examine witnesses (*id.*, rule 126(a)). Following the hearing, the Commission may vote to impose discipline-from private admonishment to removal of the judge. (*Id.*, rule 134.)

The judge may petition the Supreme Court to review the Commission's determination. (Cal. Const., art. VI, § 18, subd. (d).) The Supreme Court may grant review of the determination or it may let the determination stand.(*Ibid.*)

Procedural Background

Appellant filed a petition for writ of mandate against Richard Gannon (Gannon), the current administrative director, and the Board. Appellant brought his first cause of action for a writ of mandate (Code Civ. Proc., § 1085) against Gannon, "as a taxpayer of the State of California interested in compliance with the Labor Code by the Division of Workers' Compensation, and its Administrative Director ...." In this cause of action, he sought to compel Gannon to repeal the regulations adopted to enforce Labor Code section 123.6 and to adopt regulations consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of judges.

Appellant brought his second cause of action for a writ of administrative mandate (Code Civ. Proc., § 1094.5) against the Board. He sought to have the Board set aside its decision upholding his termination, dismiss the notice of adverse action, and order the Department of Industrial Relations, Division of Workers' Compensation, to reinstate him and compensate him.

Gannon demurred, and his demurrer was sustained without leave to amend. Real party in interest Department of Industrial Relations then appeared in the action. Following a hearing, the trial court denied the petition for writ of administrative mandate.

Contentions

I

Appellant contends the trial court erred in sustaining Gannon's demurrer to his cause of action for a writ of mandate, in that he failed to carry out his obligation to comply with Labor Code section 123.6. *220

II

Appellant also contends the trial court erred in denying his petition for writ of administrative mandate.

Discussion

I

(1a) Appellant contends the trial court erred in sustaining Gannon's demurrer to his cause of action for a writ of mandate, in that he failed to carry out his obligation to comply with Labor Code section 123.6. We disagree.

(2) A demurrer tests the sufficiency of the plaintiff's complaint, i.e., whether it states facts sufficient to constitute a cause of action upon which relief may be based. (Code Civ. Proc., § 430.10, subd. (e); *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 841-842 [73 Cal.Rptr.2d 427].) In determining whether the complaint states facts sufficient to constitute a cause of action, the trial court may consider all material facts pleaded in the complaint and those arising by reasonable implication therefrom; it may not consider

contentions, deductions or conclusions of fact or law. (*Moorev.Conliffe* (1994) 7 Cal.4th 634, 638 [29 Cal.Rptr.2d 152, 871 P.2d 204]; *Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790 [90 Cal.Rptr.2d 598].) The trial court also may consider matters of which it may take judicial notice. (Code Civ. Proc., § 430.30, subd. (a); *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459 [80 Cal.Rptr.2d 329].) A demurrer should not be sustained without leave to amend if the complaint, liberally construed, can state a cause of action under any theory or if there is a reasonable possibility the defect can be cured by amendment. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 [9 Cal.Rptr.2d 92, 831 P.2d 317]; *Jagerv.County of Alameda* (1992) 8 Cal.App.4th 294, 297 [10 Cal.Rptr.2d 293].)

On appeal, we review the trial court's sustaining of a demurrer without leave to amend de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law and applying the abuse of discretion standard in reviewing the trial court's denial of leave to amend. (*Montclair Parkowners Assn. v. City of Montclair, supra,* 76 Cal.App.4th at p. 790; *Hernandezv. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497-1498 [57 Cal.Rptr.2d 406].) The plaintiff bears the burden of proving the trial court erred in sustaining the demurrer or abused its discretion in denying leave to amend. (***221***City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc., supra,* 68 Cal.App.4th at p. 459; *Coutin v.Lucas* (1990) 220 Cal.App.3d 1016, 1020 [270 Cal.Rptr. 93].)

(3) Mandamus is an appropriate means for compelling a public official to perform an official act that is required by law. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442 [261 Cal.Rptr. 574, 777 P.2d 610].) It generally will lie only to compel the public official's performance of a duty which is purely ministerial in nature. (*Transdyn/Cresci JV v. City and County of San Francisco* (1999) 72 Cal.App.4th 746, 752 [85 Cal.Rptr.2d 512].) Where a public official is required by law to exercise his or her discretion, mandamus will lie to compel the official to exercise his or her discretion under a proper interpretation of the law. (*Common Cause, supra,* at p. 442; *Saathoff v. City of San Diego* (1995) 35 Cal.App.4th 697, 702 [41 Cal.Rptr.2d 352].) It will not lie to compel the public official to exercise his or her discretion in a particular manner, however. (*Saathoff, supra,* at p. 702.)Mandamus also is available "to 'correct those acts and decisions of administrative agencies which are in violation of law ....' " (*Transdyn/Cresci JV, supra,* at p. 752.)

(4) Rules adopted by an administrative agency fall into one of two categories: quasi-legislative or interpretive. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10 [78 Cal.Rptr.2d 1, 960 P.2d 1031].) Quasi-legislative rules are those adopted pursuant to a delegation of legislative power. (*Ibid.*) Such rules "have the dignity of statutes." (*Ibid.*) Thus, the scope of judicial review of these rules is narrow.(*Ibid.*) Once the court is "satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end." (*Id.* at pp. 10-11.)

" ' "These issues do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity ...." [Citation.] Our inquiry necessarily is confined to the question whether the classification is "arbitrary, capricious or [without] reasonable or rational basis." [Citation.]' " (*Yamaha Corp. of America v. State Bd. of Equalization, supra,* 19 Cal.4th at p. 11, fn. omitted.) The court does not, however, "defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued. [Citations.]" (*Id.* at p. 11, fn. 4.)

(1b) The regulations at issue here fall within the category of quasi-legislative rules, having been adopted pursuant to the legislative mandate of ***222** Labor Code section 123.6. (See *Yamaha Corp. of America v. State Bd. of Equalization, supra,* 19 Cal.4th at p. 10.)The question before us is whether the regulations adopted by the administrative director pursuant to Labor Code section 123.6 " ' "(1) [are] 'within the scope of the authority conferred' [citation] and (2) [are] 'reasonably necessary to effectuate the purpose of the statute' [citation]." ' " (19 Cal.4th at p. 11.)If they are not as a matter of law, mandate will lie

to compel the administrative director to adopt regulations which do meet these requirements. (*Common Cause v. Board of Supervisors, supra*, 49 Cal.3d at p. 442; *Transdyn/Cresci JV v. City and County of San Francisco, supra*, 72 Cal.App.4th at p. 752; see, e.g., *Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75 Cal.App.4th 1315 [90 Cal.Rptr.2d 54].)

As previously stated, Labor Code section 123.6, subdivision (a), requires that "workers' compensation administrative law judges employed by the administrative director shall subscribe to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code." It further provides that "[t]he administrative director shall adopt regulations to enforce this section. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code)."

Appellant's contention is that the regulations adopted by the then administrative director are not, "[t]o the extent possible, ... consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges." (Lab. Code, § 123.6, subd. (a).) For example, the decision to discipline a WCJ is made by the administrative director alone, whereas the decision to discipline a state judge is made by the entire Commission. A state judge is afforded due process rights during the investigation, while a WCJ is not afforded such rights until after discipline has been imposed. Additionally, a state judge is paid his or her salary while defending against allegations of misconduct, while a WCJ's opportunity to defend comes after he or she has been terminated. Finally, the Commission rules specifically provide for such lesser enforcement mechanisms as monitoring, admonishment and censure, while the regulations do not.

The gravamen of appellant's argument is that Labor Code section 123.6, subdivision (a), must be interpreted to require the administrative director to adopt regulations to enforce the section which provide the same disciplinary *223 procedures as those provided to state judges. (5) In the construction of statutes, the primary goal of the court is to ascertain and give effect to the intent of the Legislature. (Code Civ. Proc., § 1859; *People v. Gardeley* (1996) 14 Cal.4th 605, 621 [59 Cal.Rptr.2d 356, 927 P.2d 713].) The court looks first to the language of the statute; if clear and unambiguous, the court will give effect to its plain meaning. (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 208-209 [271 Cal.Rptr. 191, 793 P.2d 524]; accord, *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

Where the court must construe the statute, it " 'turns first to the words themselves for the answer.' [Citation.]" (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) The words used should be given their usual, ordinary meanings and, if possible, each word and phrase should be given significance. (*Ibid.*; accord, *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].) The words used "must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible." (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836]; accord, *Lungren, supra*, at p. 735.)

Words and phrases are construed in light of the statutory scheme. (*People v. Hernandez* (1988) 46 Cal.3d 194, 201 [249 Cal.Rptr. 850, 757 P.2d 1013], disapproved on another ground in *People v. King* (1993) 5 Cal.4th 59, 78, fn. 5 [19 Cal.Rptr.2d 233, 851 P.2d 27]; *Lungren v. Deukmejian, supra*, 45 Cal.3d at p. 735.)They will not be construed in such a way as to render related provisions nugatory. (*Lungren, supra*, at p. 735.)Additionally, in enacting a statute, the Legislature is deemed to have been aware of statutes and judicial decisions interpreting them already in effect and to have enacted the statute in light of them. (*Hernandez, supra*, at p. 201.)Moreover, the legislative history of a statute is a legitimate and valuable aid in its interpretation (*California Mfrs. Assn. v. Public Utilities Com., supra*, 24 Cal.3d at p. 844.)

(1c) As previously noted, WCJ's, as civil service employees, retain the procedural rights provided under the State Civil Service Act. (Cal. Code Regs., tit. 8, § 9723, subd. (a); see Gov. Code, § 19574 et seq.) The Legislature is deemed to have been aware of the provisions of the State Civil Service Act when it amended Labor Code section 123.6 to require the administrative director to adopt implementing regulations. (*People v. Hernandez, supra,* 46 Cal.3d at p. 201.)With the backdrop of the State Civil Service Act, the Legislature's broad language in Labor Code section 123.6, subdivision (a), "[*t*]*o the extent possible*," and "*consistent with*" (italics *224 added), must be construed to afford the administrative director considerable discretion in adopting regulations that gave effect to the Legislature's intent without negating the provisions of the Civil Service Act. (*Lungren v. Deukmejian, supra,* 45 Cal.3d at p. 735.)

Again as previously noted, the purpose of the amendment to Labor Code section 123.6 was to address the problems of corruption and misconduct among WCJ's and of "limited and sporadic" training for WCJ's. (Assem. Fin. & Ins. Com., Analysis of Assem. Bill No. 1252 (1993-1994 Reg. Sess.) Aug. 24, 1993.) The Legislature wanted to "provide a mechanism to ensure that workers' comp. referees are aware of and are engaging in ethical conduct." (*Ibid.*) The purpose was not to protect the procedural rights of WCJ's. The requirement that the regulations be consistent with Commission rules must be read in this light. (Code Civ. Proc., § 1859; *People v. Gardeley, supra,* 14 Cal.4th at p. 621.)The regulations adopted are to be, "[t]o the extent possible, ... consistent with the procedures established by the Commission on Judicial Performance for *regulating the activities* of state judges" (Lab. Code, § 123.6, subd. (a), italics added), not for protecting the rights of state judges.

Appellant makes no showing that the regulations adopted by the administrative director are not consistent with the Commission rules in terms of regulating the activities of WCJ's, ensuring they receive proper training and do not engage in unethical behavior. Therefore, he has not demonstrated that the regulations adopted by the administrative director pursuant to Labor Code section 123.6 " ' "(1) [are not] 'within the scope of the authority conferred' [citation] and (2) [are not] 'reasonably necessary to effectuate the purpose of the statute' [citation]." ' " (*Yamaha Corp. of America v. State Bd. of Equalization, supra,* 19 Cal.4th at p. 11.)He has not demonstrated that he is entitled to a writ of mandate to compel the administrative director to adopt different regulations. (*Common Cause v. Board of Supervisors, supra,* 49 Cal.3d at p. 442; *Transdyn/Cresci JV v. City and County of San Francisco, supra,* 72 Cal.App.4th at p. 752.)Hence, he has not demonstrated that the trial court erred in sustaining the demurrer to his writ of mandate cause of action. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc., supra,* 68 Cal.App.4th at p. 459; *Coutin v. Lucas, supra,* 220 Cal.App.3d at p. 1020.)

II

(6a) Appellant also contends the trial court erred in denying his petition for writ of administrative mandate. Again, we disagree.

(7) In reviewing the trial court's determination, this court's duty is to determine whether the Board's decision was supported by the findings and *225 the findings by substantial evidence or whether the Board abused its discretion by failing to proceed in the manner required by law. (Code Civ. Proc., § 1094.5, subds. (b), (c); *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334-335 [25 Cal.Rptr.2d 842].) In making our determination, we examine all relevant evidence in the entire administrative record. (*Desmond, supra,* at p. 335.)We view the evidence in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all inferences in support of the judgment. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 697 [139 Cal.Rptr. 700, 566 P.2d 602]; *Rivard v. Board of Pension Commissioners* (1985) 164 Cal.App.3d 405, 412-413 [210 Cal.Rptr. 509].) Substantial evidence is defined as evidence of " ' " ' "ponderable legal significance ... reasonable in nature, credible, and of solid value[, and]" ' " ... " 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion' " ....' " (*Desmond, supra,* at p. 335, citations omitted; see *Rivard, supra,* at p. 413.)

Moreover, it is presumed that the Board regularly performed its duty. The burden is on appellant to prove an abuse of discretion by failing to proceed in

the manner required by law or making a decision unsupported by substantial evidence. (*Desmondv.County of Contra Costa, supra,* 21 Cal.App.4th at pp. 335-336.)

(6b) Appellant first claims the Board abused its discretion by failing to proceed in the manner required by law, i.e., according to regulations which complied with Labor Code section 123.6, subdivision (a). As discussed in part I, *ante*, we reject this claim.

Appellant next challenges the Board's finding of dishonesty, claiming there is no substantial evidence he did not "believe" he had no cases "pending and undetermined for 90 days after [being] submitted for decision" (Lab. Code, § 123.5, subd. (a)) when he signed affidavits to that effect. He was required to submit such affidavits "based upon information and belief." (Cal. Code Regs., tit. 8, § 9714, subd. (a).)

Appellant's argument is based upon his testimony that he believed he was in compliance with this requirement if he gave his secretary a handwritten decision within the 90-day period and on the evidence other WCJ's shared that belief. He acknowledges the evidence he was told differently by his supervisor. He also acknowledges "that his view in the face of management's position may have been naive, and that his ignoring of management's view may have been arrogant, and unreasonable." He nonetheless argues that, in view of the evidence of his belief, respondents did not prove dishonesty on his part. *226

Appellant's "testimony presented a factual determination for the trier of fact." (*Cvrcek v. State Personnel Bd.* (1967) 247 Cal.App.2d 827, 832 [56 Cal.Rptr. 84].) It was up to the Board to make the determination based on his testimony and the other evidence whether he honestly believed he was in compliance with this requirement if he gave his secretary a handwritten decision within the 90-day period or he was being dishonest when he took that position in the face of instruction from his supervisor that his position was incorrect and he would be held accountable if he acted in accordance with his position. What he terms "naive, ... arrogant, and unreasonable" "undoubtedly will strike reasonable minds with different force" (*id.* at p. 830), appearing as dishonest. Accordingly, substantial evidence supports the Board's finding that appellant acted with dishonesty when he signed the affidavits in question. (*Desmondv.County of Contra Costa, supra,* 21 Cal.App.4th at p. 335.)

Appellant next challenges the Board's finding that Rentzer did not accept his invitations. This finding appears in an unsigned proposed decision in the administrative record. The signed decision contains no such finding. Rather, it contains a finding that "when appellant initially asked Rentzer if she would like to accompany him on non work-related excursions, she replied 'Yeah, sure' or words to that effect. Given such a response, it was not entirely irrational for appellant to at least initially believe that his overtures toward Rentzer were acceptable to her." Accordingly, appellant's challenge is not well taken.

The judgment is affirmed.

Ortega, J., and Mallano, J., concurred. *227

Cal.App.2.Dist.
Young v. Gannon
97 Cal.App.4th 209, 118 Cal.Rptr.2d 187, 67 Cal. Comp. Cases 411, 02 Cal. Daily Op. Serv. 2823, 2002 Daily Journal D.A.R. 3411

END OF DOCUMENT

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 4. Instruction and Services (Refs & Annos)
Part 27. Pupils (Refs & Annos)
Chapter 6.5. Pupil Records (Refs & Annos)
Article 1. Legislative Intent (Refs & Annos)

§ 49060. Legislative intent; application of chapter; effect of chapter

It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 regarding parental access to, and the confidentiality of, pupil records in order to insure the continuance of federal education funds to public educational institutions within the state, and to revise generally and update the law relating to such records.

This chapter applies to public agencies that provide educationally related services to pupils with disabilities pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to public agencies that educate pupils with disabilities in state hospitals or developmental centers and in youth and adult facilities.

This chapter shall have no effect regarding public community colleges, other public or private institutions of higher education, other governmental or private agencies which receive federal education funds unless described herein, or, except for Sections 49068 and 49069 and subdivision (b)(5) of Section 49076, private schools.

The provisions of this chapter shall prevail over the provisions of Section 12400 of this code and Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code to the extent that they may pertain to access to pupil records.

CREDIT(S)

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1994, c. 1288 (A.B.3235), § 6.)

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

Derivation: Education Code 1959, § 10931, added by Stats.1975, c. 816, p. 1856, § 4.

CROSS REFERENCES

"Access" defined for purposes of this Chapter, see Education Code § 49061.
"Pupil record" defined for purposes of this Chapter, see Education Code § 49061.

CODE OF REGULATIONS REFERENCES

Local educational agency (LEA) provider, generally, see 22 Cal. Code of Regs. § 51270.
Performance based accountability system, PBA system reporting procedures, see 5 Cal. Code of Regs. § 19601.

LAW REVIEW AND JOURNAL COMMENTARIES

Education; Special education--Conformity with individuals with disabilities act. Kevin T. Collins, 26 Pac.L.J. 521 (1995).

Review of Selected 1994 California Legislation. 26 Pac.L.J. 202 (1995).

LIBRARY REFERENCES

2006 Main Volume

Records ⚿ 55.
Westlaw Topic No. 326.
C.J.S. Records §§ 99 to 101.

RESEARCH REFERENCES

Treatises and Practice Aids

Investigating Employee Conduct App D, Search, Seizure and Privacy Laws.

NOTES OF DECISIONS

Construction with other laws 1
Educational or pupil records 2
Videotapes 3

1. Construction with other laws

Provisions of state Education Code enacted to manifest compliance with federal statutory requirements concerning privacy of pupil records expressly prevail over requirements of Public Records Act with respect to pupil records. Poway Unified School Dist. v. Superior Court (Copley Press) (App. 4 Dist. 1998) 73 Cal.Rptr.2d 777, 62 Cal.App.4th 1496, review denied. Records ⚿ 58

2. Educational or pupil records

Tort Claims Act claim presented to school district on behalf of student is not "educational record" or "pupil record" within purview of state and federal statutory exemptions from public disclosure under state Public Re-

cords Act; fact that litigant, student or otherwise, chooses to sue school does not transmogrify a tort claim into an educational or pupil record. Poway Unified School Dist. v. Superior Court (Copley Press) (App. 4 Dist. 1998) 73 Cal.Rptr.2d 777, 62 Cal.App.4th 1496, review denied. Records ⚿ 55

3. Videotapes

Without the issuance of a subpoena, court order, or parental consent, a school district may allow the district attorney to view a videotape of an assault upon a student by another student that was recorded on the security camera of a school bus. Op.Atty.Gen. No. 01-209 (August 27, 2001), 2001 WL 980622.

West's Ann. Cal. Educ. Code § 49060, CA EDUC § 49060
Current with legislation through Ch. 765 of the 2008 Reg.Sess., Ch. 1 of the 2007-2008 1st Ex.Sess., Ch. 1 of the 2007-2008 2nd Ex.Sess., Ch. 7 of the 2007-2008 3rd Ex.Sess., and all propositions on 2008 ballots.

END OF DOCUMENT

Effective: January 1, 2006

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 4. Instruction and Services (Refs & Annos)
Part 27. Pupils (Refs & Annos)
Chapter 6.5. Pupil Records (Refs & Annos)
Article 4. Rights of Parents (Refs & Annos)

→ § 49069.5. Foster care pupils; transfers of pupils and records; effect of absences due to change of placement or court-ordered activity on grades

(a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(b) The proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency and the county placing agency.

(c) As soon as the county placing agency becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency shall contact the appropriate person at the local educational agency of the pupil. The county placing agency shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out.

(d) Upon receiving a transfer request from a county placing agency, the local educational agency shall, within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement.

(e) As part of the transfer process described under subdivisions (c) and (d), the local educational agency shall compile the complete educational record of the pupil including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the pupil's plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(f) The local educational agency shall assign the duties listed in this section to a person competent to handle the transfer procedure and aware of the specific educational recordkeeping needs of homeless, foster, and other transient children who transfer between schools.

(g) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a decision to change the placement of a pupil made by a court or placing agency, the grades and credits of the pupil will be calculated as of the date the pupil left school, and no lowering of grades will occur as a result of the absence of the pupil under these circumstances.

(h) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a verified court appearance or related court ordered activity, no lowering of his or her grades will occur as a result of the absence of the pupil under these circumstances.

(i) For the purposes of this section, "pupil in foster care" means any child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

CREDIT(S)

(Added by Stats.1998, c. 311 (S.B.933), § 2, eff. Aug. 19, 1998. Amended by Stats.2003, c. 862 (A.B.490), § 7; Stats.2005, c. 639 (A.B.1261), § 4.)

OFFICIAL FORMS

2009 Electronic Update

<Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West's California Judicial Council Forms Pamphlet.>

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

Provisions of Stats.1998, c. 311 (S.B.933), relating to development of protocols for placement of foster children in group homes, emergency regulations, creation of a community care facility law enforcement task force, and providing for a reexamination of the role of out-of-home placements, see Historical and Statutory Notes under Welfare and Institutions Code § 18987.6.

Local agency and school district cost reimbursement provisions relating to Stats.2003, c. 862 (A.B.490), see Historical and Statutory Notes under Education Code § 48645.5.

Local agency and school district cost reimbursement provisions relating to Stats.2005, c. 639 (A.B.1261), see Historical and Statutory Notes under Education Code § 48853.

CROSS REFERENCES

"Pupil record" defined for purposes of this Chapter; see Education Code § 49061.

LAW REVIEW AND JOURNAL COMMENTARIES

Falling between the cracks: Why foster children are not receiving appropriate special education services. Brandy Miller, 5 Whittier J. Child & Fam. Advoc. 547 (2006).

LIBRARY REFERENCES

2006 Main Volume

Records 55.
Westlaw Topic No. 326.
C.J.S. Records §§ 99 to 101.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Schools § 322, Pupil Records--Rights of Parents.

Forms

West's California Judicial Council Forms JV-538, (08) Findings and Orders Regarding Transfer from School of Origin.

West's California Judicial Council Forms JV-539, (08) Request for Hearing Regarding Child's Education.

West's Ann. Cal. Educ. Code § 49069.5, CA EDUC § 49069.5

Current with urgency legislation through Ch. 2 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 25 of the 2009-2010 3rd Ex.Sess., and Props. 1A to 1F on the 5/19/2009 ballot and propositions on the 6/8/2010 ballot received as of 5/1/2009

END OF DOCUMENT

West's Ann.Cal.Educ.Code § 76200

CEffective: [See Text Amendments]

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 3. Postsecondary Education (Refs & Annos)
Division 7. Community Colleges (Refs & Annos)
Part 47. Students (Refs & Annos)
Chapter 1.5. Student Records (Refs & Annos)
Article 1. Legislative Intent (Refs & Annos)

→§ 76200. Legislative intent

It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 [FN1] regarding the confidentiality of student records in order to insure the continuance of federal education funds to public community colleges within the state, and to revise generally and update the law relating to such records.

CREDIT(S)

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

[FN1] Education Amendments of 1974 (20 U.S.C.A. 1232g).

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Derivation: Educ.C.1959, § 25430, added by Stats.1975, c. 816, p. 1863, § 7.

CODE OF REGULATIONS REFERENCES

California community colleges, student records, purpose, see 5 Cal. Code of Regs. § 54600.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Universities and Colleges § 101, Records.

West's Ann. Cal. Educ. Code § 76200, **CA EDUC § 76200**

Current with all 2007 laws

END OF DOCUMENT

meeting so called shall be competent to instruct the governing board, and the board shall, in all cases, be bound by such instructions upon the following subjects:

(a) The location or change of location of the schoolhouse, if the proposal to instruct the board in regard to changing the location of the schoolhouse is passed by a vote of two-thirds of all the electors voting at the meeting upon the proposition.

(b) The use of the schoolhouse for other than school purposes, but in no case shall the schoolhouse be used for purposes which necessitate the removal of any school desks or other school furniture.

(c) The sale and purchase of school sites.

(d) The prosecution, settlement, or compromise of any litigation in which the district is engaged, or is likely to become engaged.

The meeting may vote money not exceeding one hundred dollars ($100) in any one year, for any of these purposes in addition to any amount which may be raised by the sale of district school property, and the insurance of property destroyed by fire, except that the proceeds of the insurance of the library and apparatus shall be paid into the library fund. All funds raised by the sale of school property may be disposed of by direction of a district meeting.

1022. The meeting provided for in Section 1021 shall be called by posting three notices in public places, one of which shall be in a conspicuous place on the schoolhouse, for not less than 10 days prior to the time for which the meeting is called. The notices shall specify the purposes for which the meeting is called, and no other business shall be transacted at the meeting.

1023. Any district meeting called pursuant to Sections 1021 and 1022 shall be organized by choosing a chairman from the electors present. The district clerk or secretary shall be clerk of the meeting, and shall enter the minutes on the records of the district. Any district meeting may be adjourned from time to time as found necessary. All votes instructing the board of trustees shall be taken by ballot, or by "ayes" and "noes" vote as the meeting may determine.

Article 4. Records and Reports

1031. The governing board of every school district shall:

(a) Certify or attest to actions taken by the governing board whenever such certification or attestation is required for any purpose.

(b) Keep an accurate account of the receipts and expenditures of school moneys, and keep such record open to public inspection.

(c) Make an annual report, on or before the first day of July, to the county superintendent of schools in the manner and form and on the blanks prescribed by the Superintendent of Public Instruction.

(d) Make or maintain such other records or reports as are required by law.

1032. Whenever in any school year the school register of any teacher, or other records of any school district are destroyed by conflagration or public calamity, preventing the teacher and school officers from making their annual reports in the usual manner and with accuracy, affidavits of the teacher, the school principals, or other officers of the school district, certifying as to the contents of the destroyed register or other records, shall be accepted by all school authorities for all school purposes appertaining to the school district, except that of average daily attendance.

1033. Whenever the average daily attendance of any school district has been materially affected in any school year by conflagration, public calamity, or epidemic of unusual duration and prevalence, the regular annual reports of the teacher, the school principal, or officers of the school district, shall be accepted by all school officers for all school matters appertaining to the school district, except that of average daily attendance.

1034. Whenever the destruction of records of a district is not otherwise authorized or provided for by law, the governing board of the district may destroy such records of the district in accordance with regulations of the Superintendent of Public Instruction which he is herewith authorized to adopt.

1035. The governing board of any school district may make microfilm or photographic copies of any records of the district. The original of any records of which a photographic or microfilm copy has been made may be destroyed when provision is made for permanently maintaining such photographic or microfilm copies in the files of the district, except that no original record that is basic to any required audit shall be destroyed prior to the second July 1st succeeding the completion of the audit.

1036. In any joint school district, all returns, reports, certificates, estimates, petitions, and other papers of any kind relating to schools and school districts, required by law to be filed with or presented to the board of supervisors or county superintendent of schools, shall be filed with or presented to the supervisors or superintendent of schools of each county in which any portion of the district is situated.

1037. The governing board of any school district may make a charge for furnishing transcripts of former pupils' records in excess of two copies, and for more than two verifications of various records of former pupils. Such a charge shall be fifty cents ($0.50) or an amount not to exceed the cost of rendering the service, whichever is the lesser.

Article 5. Powers With Respect to Property

1041. The governing board of any school district may select and acquire sites within the boundaries of the district, and

Failure to bring action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

SEC. 11. Section 8067 is added to said code, to read:

Actions prior to notice

8067. If the department fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the department of its action on the claim, consider the claim disallowed and bring an action against the department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

SEC. 12. Section 8068 is added to said code, to read:

Judgment for plaintiff

8068. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any privilege tax due and payable from the plaintiff to the State under this article. The balance of the judgment shall be refunded to the plaintiff.

SEC. 13. Section 8069 is added to said code, to read:

Interest

8069. In any judgment, interest shall be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the department.

SEC. 14. Section 8070 is added to said code, to read:

Actions by assignees

8070. A judgment shall not be rendered in favor of the plaintiff in any action brought against the department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

CHAPTER 1989

An act to amend Section 10752 of the Education Code, as enacted by the Legislature at its 1959 Regular Session, relating to schools.

In effect September 18, 1959

[Approved by Governor July 16, 1959. Filed with Secretary of State July 17, 1959.]

The people of the State of California do enact as follows:

SECTION 1. Section 10752 of the Education Code, as enacted by the Legislature at its 1959 Regular Session is amended to read:

10752. Whenever a pupil transfers from one school district to another within this State, the cumulative record of the pupil, which may be available to the pupil's parent for inspection during consultation with a certificated employee of the district, or a copy of the record, shall be transferred to the district to which the pupil transfers; provided, a request for such cumulative record is received from the district to which

the transfer is made. The State Board of Education is hereby authorized to adopt rules and regulations concerning the transfer of cumulative records from one school district to another. The effective date of this section shall be July 1, 1960.

CHAPTER 1990

An act to amend Section 537 of the Penal Code, relating to defrauding innkeepers.

[Approved by Governor July 16, 1959. Filed with Secretary of State July 17, 1959.]

In effect September 18, 1959

The people of the State of California do enact as follows:

SECTION 1. Section 537 of the Penal Code is amended to read:

537. Any person who obtains any food or accommodations at an hotel, inn, restaurant, boarding house, lodging house, apartment house, bungalow court, motel, or auto camp, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boarding house, lodging house, apartment house, bungalow court, motel, or auto camp by the use of any false pretense, or who, after obtaining credit, food accommodations, at an hotel, inn, restaurant, boarding house, lodging house, apartment house, bungalow court, motel, or auto camp, absconds, or surreptitiously, or by force, menace, or threats, removes any part of his baggage therefrom without paying for his food or accommodations is guilty of a misdemeanor.

Evidence that such person left the premises of such an hotel, inn, restaurant, boarding-house, lodging-house, apartment house, bungalow court, motel, or auto camp, without paying or offering to pay for such food or accommodation shall be prima facie evidence that such person obtained such food or accommodations with intent to defraud the proprietor or manager.

CHAPTER 1991

An act authorizing a suit or suits against the State of California to quiet title against it to certain real property in the County of Del Norte, State of California.

[Approved by Governor July 16, 1959. Filed with Secretary of State July 17, 1959.]

In effect September 18, 1959

The people of the State of California do enact as follows:

SECTION 1. Any person or persons owning or claiming any interest in or to that certain real property situated in the County of Del Norte, State of California, and described in

CHAPTER 381

An act to amend Section 10759 of the Education Code, relating to pupils.

[Approved by Governor September 4, 1973. Filed with Secretary of State September 4, 1973.]

The people of the State of California do enact as follows:

SECTION 1. Section 10759 of the Education Code is amended to read:

10759. The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent or guardian of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent or guardian to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

CHAPTER 382

An act to amend Section 2 of Chapter 1378 of the Statutes of 1965, relating to the Commission on the Status of Women.

[Approved by Governor September 4, 1973. Filed with Secretary of State September 4, 1973.]

The people of the State of California do enact as follows:

SECTION 1. Section 2 of Chapter 1378 of the Statutes of 1965 is amended to read:

Sec. 2. There is in the state government the Commission on the Status of Women. The commission shall consist of 17 members: three members of the Senate and one public member appointed by the Senate Committee on Rules, three Members of the Assembly and one public member appointed by the Speaker, the Superintendent of Public Instruction, the Chief of the Division of Industrial Welfare in the Department of Industrial Relations, and seven public members appointed by the Governor, with the consent of the Senate. The Members of the Legislature shall serve at the pleasure of the appointing powers.

Public member appointees of the Speaker and the Senate Committee on Rules shall serve four-year terms effective July 1, 1975. The appointing powers may appoint persons holding office at the effective date of the amendment of this section at the 1973–74 Regular Session to serve terms until July 1, 1975. The appointing powers may reappoint a member whose term has expired, and shall

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subdivisions (b) and (c) of Section 10941.

10934. School districts shall notify parents of their rights under this chapter upon the date of the pupil's initial enrollment, and thereafter at the same time as notice is issued pursuant to Section 10921. The notice shall be, insofar as is practicable, in the home language of the pupil. The notice shall take a form which reasonably notifies parents of the availability of the following specific information:

(a) The types of pupil records and information contained therein which are directly related to students and maintained by the institution

(b) The name and position of the official responsible for the maintenance of each type of record, the persons who have access to those records, and the purposes for which they have such access.

(c) The policies of the institution for reviewing and expunging those records.

(d) The right of the parent to access to pupil records.

(e) The procedures for challenging the content of pupil records.

(f) The cost if any which will be charged to the parent for reproducing copies of records.

(g) The categories of information which the institution has designated as directory information pursuant to Section 10944 and the parties to whom such information will be released unless the parent objects.

(h) Any other rights and requirements set forth in this chapter.

10935. A log or record shall be maintained for each pupil's record which lists all persons or organizations requesting or receiving information from the record excepting school personnel and the reasons therefor. The log shall be open to inspection only by a parent and the school official or his designee responsible for the maintenance of pupil records.

10936. Any school district may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; provided, however, that no charge shall be made for furnishing (1) up to two transcripts of former pupils' records or (2) up to two verifications of various records of former pupils.

10937. (a) When grades are given for any course of instruction taught in a school district, the grade given to each pupil shall be the grade determined by the teacher of the course and the determination of the pupil's grade by the teacher, in the absence of mistake, fraud, bad faith, or incompetency, shall be final.

(b) No grade of a pupil participating in a physical education class, however, may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil.

10938. The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written

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report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

Notwithstanding the provisions of subdivision (a) of Section 10932, the provisions of this section shall apply to the parent of any pupil without regard to the age of the pupil.

10939. Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent enrollment and scholarship record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. The State Board of Education is hereby authorized to adopt rules and regulations concerning the transfer of records.

Article 4. Rights of Parents

10940. Parents of currently enrolled or former pupils have an absolute right to access to any and all pupil records related to their children which are maintained by school districts or private schools. The editing or withholding of any such records is prohibited.

Each school district shall adopt procedures for the granting of requests by parents to inspect and review records during regular school hours, provided that access shall be granted no later than five days following the date of the request. Procedures shall include the notification to the parent of the location of all official pupil records if not centrally located and the providing of qualified certificated personnel to interpret records where appropriate.

10941. Following an inspection and review of a pupil's records, the parent of a pupil or former pupil of a school district may challenge the content of any pupil record.

(a) The parent of a pupil may file a written request with the superintendent of the district to remove any information recorded in the written records concerning his child which he alleges to be: (1) inaccurate, (2) an unsubstantiated personal conclusion or inference, (3) a conclusion or inference outside of the observer's area of competence, or (4) not based on the personal observation of a named person with the time and place of the observation noted.

(b) Within 30 days of receipt of such request, the superintendent or his designee shall meet with the parent and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the school district. The superintendent shall then sustain or deny the allegations.

If the superintendent sustains the allegations, he shall order the

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shall notify in writing all members and members-elect of the date and time.

At the annual meeting, the governing board of the community college district shall organize by electing a president from its members and a secretary.

SEC. 348. Section 25420 of the Education Code is amended to read:

25420. Every community college board shall hold regular monthly meetings at such times as may be provided in the rules and regulations adopted by them for their own government, except that in community college districts composed of two or more high school districts, the regular meetings may be quarterly.

SEC. 349. Section 25422 of the Education Code is amended to read:

25422. The community college board shall meet in a public building which is owned or leased by the community college district.

SEC. 350. Section 25422.5 of the Education Code is amended to read:

25422.5. Except as otherwise provided in this code, the powers and duties of community college boards are such as are assigned to high school boards.

SEC. 351. Section 25423 of the Education Code is amended to read:

25423. The governing board of any school district which maintains a community college may rent or purchase academic caps and gowns for faculty use at ceremonies.

SEC. 352. Section 25423.5 of the Education Code is amended to read:

25423.5. The governing board of a district maintaining a community college may employ as a community college teacher of an academic subject matter area or areas a person who does not hold a credential issued by the State Board of Education authorizing such service if the person has been granted a master's degree or a doctor's degree in the academic subject matter area for which he is employed to teach. No such person shall teach classes in grades below grades 13 and 14 in any community college. No such person shall be employed for an aggregate period which is greater than three school years unless he fulfills the requirements of Section 13132 and of subdivision (c) of Section 13193.

No person shall be employed pursuant to this section until he has complied with the prerequisites to issuance of a certification document prescribed by Sections 13121, 13123, 13124, 13126, and 13127, and no person shall be so employed who has been determined to come within any of the provisions of Section 13129 or Section 13130. The State Board of Education shall make necessary provision for enforcing compliance with the preceding sentence.

The governing board of each school district maintaining a community college shall, in the manner and form prescribed

Education Code

1973—Sections 1—12851

VOLUME ONE

Compiled by
GEORGE H. MURPHY
Legislative Counsel

STATE OF CALIFORNIA
Department of General Services
Documents Section
P.O. Box 20191, Sacramento 95820

FOREWORD

This compilation, prepared by the Legislative Counsel, is the latest amended form of the Education Code.

For convenience the code is divided into four volumes. Volume 1 includes the table of contents and Sections 1–12851. Volume 2 includes the table of contents and Sections 12901–20085. Volume 3 includes the table of contents and Sections 20101–45065. Volume 4 contains the code index.

This edition shows all sections as they are in effect on and after January 1, 1974. When a section has an effective or operative date earlier or later than January 1, 1974, the section carries a note expressing that effect.

History notes in parentheses following headings or sections reflect only the latest legislative action immediately preceding this publication. The statutory record may be consulted to determine prior history in any particular instance.

The Education Code was recodified at the 1959 Regular Session. The recodification was prepared by the Joint Legislative Committee for the Revision of the Education Code which was created by Chapter 2419 of the Statutes of 1957.

Pursuant to Resolution Chapter 197 of the 1959 Regular Session, the main index and section headings were originally prepared by the University of California at Los Angeles under contract with the Joint Legislative Committee for the Revision of the Education Code.

Cross-Reference Tables. Tables of cross-reference showing the origin of each section of the Education Code as recodified and the disposition of former code sections in the recodified code appear at pages 5839 to 5910 of the Statutes and Amendments to the Codes for 1959.

the location of the schoolhouse is passed by a vote of two-thirds of all the electors voting at the meeting upon the proposition.

(b) The use of the schoolhouse for other than school purposes, but in no case shall the schoolhouse be used for purposes which necessitate the removal of any school desks or other school furniture.

(c) The sale and purchase of school sites.

(d) The prosecution, settlement, or compromise of any litigation in which the district is engaged, or is likely to become engaged.

The meeting may vote money not exceeding one hundred dollars ($100) in any one year, for any of these purposes in addition to any amount which may be raised by the sale of district school property, and the insurance of property destroyed by fire, except that the proceeds of the insurance of the library and apparatus shall be paid into the library fund. All funds raised by the sale of school property may be disposed of by direction of a district meeting.

Notice

1022. The meeting provided for in Section 1021 shall be called by posting three notices in public places, one of which shall be in a conspicuous place on the schoolhouse, for not less than 10 days prior to the time for which the meeting is called. The notices shall specify the purposes for which the meeting is called, and no other business shall be transacted at the meeting.

Organization

1023. Any district meeting called pursuant to Sections 1021 and 1022 shall be organized by choosing a chairman from the electors present. The district clerk or secretary shall be clerk of the meeting, and shall enter the minutes on the records of the district. Any district meeting may be adjourned from time to time as found necessary. All votes instructing the board of trustees shall be taken by ballot, or by "ayes" and "noes" vote as the meeting may determine.

Article 4. Records and Reports

Duty to Keep Certain Records and Reports

1031. The governing board of every school district shall:

(a) Certify or attest to actions taken by the governing board whenever such certification or attestation is required for any purpose.

(b) Keep an accurate account of the receipts and expenditures of school moneys.

(c) Make an annual report, on or before the first day of July, to the county superintendent of schools in the manner and form and on the blanks prescribed by the Superintendent of Public Instruction.

Note: For legislative history and construction of provisions, see notes at beginning of Division 4.

(d) Make or maintain such other records or reports as are required by law.

(Amended by Stats. 1969, Ch. 371.)

Certification as to Contents of Destroyed Records

1032. Whenever in any school year the school register of any teacher, or other records of any school district are destroyed by conflagration or public calamity, preventing the teacher and school officers from making their annual reports in the usual manner and with accuracy, affidavits of the teacher, the school principals, or other officers of the school district, certifying as to the contents of the destroyed register or other records, shall be accepted by all school authorities for all school purposes appertaining to the school district, except that of average daily attendance.

Average Daily Attendance Records Where Area Hit by Calamity

1033. Whenever the average daily attendance of any school district has been materially affected in any school year by conflagration, public calamity, or epidemic of unusual duration and prevalence, the regular annual reports of the teacher, the school principal, or officers of the school district, shall be accepted by all school officers for all school matters appertaining to the school district, except that of average daily attendance.

Regulations to Destroy Records

1034. Whenever the destruction of records of a district is not otherwise authorized or provided for by law, the governing board of the district may destroy such records of the district in accordance with regulations of the Superintendent of Public Instruction which he is herewith authorized to adopt.

Microfilming or Photographic Copies of Records

1035. The governing board of any school district may make microfilm or photographic copies of any records of the district. The original of any records of which a photographic or microfilm copy has been made may be destroyed when provision is made for permanently maintaining such photographic or microfilm copies in the files of the district, except that no original record that is basic to any required audit shall be destroyed prior to the second July 1st succeeding the completion of the audit.

Records of Joint School Districts

1036. In any joint school district, all returns, reports, certificates, estimates, petitions, and other papers of any kind relating to schools and school districts, required by law to be filed with or presented to the board of supervisors or county superintendent of schools, shall be filed with or presented to the supervisors or superintendent of schools of each county in which any portion of the district is situated.

Note: For legislative history and construction of provisions, see notes at beginning of Division 4.

SUPERSEDED

Education Code

1973—Sections 20101—45065

VOLUME THREE

Compiled by
GEORGE H. MURPHY
Legislative Counsel

STATE OF CALIFORNIA
Department of General Services
Documents Section
P.O. Box 20191, Sacramento 95820

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FOREWORD

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Pursuant to Resolution Chapter 197 of the 1959 Regular Session, the main index and section headings were originally prepared by the University of California at Los Angeles under contract with the Joint Legislative Committee for the Revision of the Education Code.

Cross-Reference Tables. Tables of cross-reference showing the origin of each section of the Education Code as recodified and the disposition of former code sections in the recodified code appear at pages 5839 to 5910 of the Statutes and Amendments to the Codes for 1959.

Nature of Powers and Duties of Boards

25422.5. Except as otherwise provided in this code, the powers and duties of community college boards are such as are assigned to high school boards.

(Amended by Stats. 1970, Ch. 102.)

Charge for Student Transcript

25422.8. The governing board of any school district maintaining a community college may make a charge of one dollar ($1) for furnishing and verifying each transcript of the record of any community college student or any former community college student in excess of two copies.

(Added by Stats. 1972, Ch. 1037.)

Purchase or Rental of Academic Caps and Gowns

25423. The governing board of any school district which maintains a community college may rent or purchase academic caps and gowns for faculty use at ceremonies.

(Amended by Stats. 1970, Ch. 102.)

Employment of Teachers Who Do Not Hold Credential

25423.5. The governing board of a district maintaining a community college may employ as a community college teacher of an academic subject matter area or areas a person who does not hold a credential issued by the Board of Governors of the California Community Colleges authorizing such service if the person has been granted a master's degree or a doctor's degree in the academic subject matter area for which he is employed to teach. No such person shall teach classes in grades below grades 13 and 14 in any community college. No such person shall be employed for an aggregate period which is greater than three school years unless he fulfills the requirement of Section 13166.

No person shall be employed pursuant to this section until he has complied with the prerequisites to issuance of a certification document prescribed by Sections 13165, 13168, 13169, and 13169.1, and no person shall be so employed who has been determined to come within any of the provisions of Section 13174 or Section 13175. The board of governors shall make necessary provision for enforcing compliance with the preceding sentence.

The governing board of each school district maintaining a community college shall, in the manner and form prescribed by the board of governors, promptly after the close of each school year file with the Department of Education a report identifying each person employed pursuant to this section during the preceding school year and certifying that all applicable laws, rules, and regulations were complied with in his employment. The Department of Education shall compile and maintain a roster of the individuals employed under this section, to be utilized in administering the provisions of this section.

West's Annotated California Codes Currentness
Code of Civil Procedure (Refs & Annos)
Part 4. Miscellaneous Provisions (Refs & Annos)
Title 3. Of the Production of Evidence (Refs & Annos)
Chapter 2. Means of Production (Refs & Annos)

➡ § 1985. Subpoena defined; affidavit for subpoena duces tecum; issuance of subpoena in blank

(a) The process by which the attendance of a witness is required is the subpoena. It is a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. It may also require a witness to bring any books, documents, or other things under the witness's control which the witness is bound by law to produce in evidence. When a county recorder is using the microfilm system for recording, and a witness is subpoenaed to present a record, the witness shall be deemed to have complied with the subpoena if the witness produces a certified copy thereof.

(b) A copy of an affidavit shall be served with a subpoena duces tecum issued before trial, showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.

(c) The clerk, or a judge, shall issue a subpoena or subpoena duces tecum signed and sealed but otherwise in blank to a party requesting it, who shall fill it in before service. An attorney at law who is the attorney of record in an action or proceeding, may sign and issue a subpoena to require attendance before the court in which the action or proceeding is pending or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein; the subpoena in such a case need not be sealed. An attorney at law who is the attorney of record in an action or proceeding, may sign and issue a subpoena duces tecum to require production of the matters or things described in the subpoena.

§ 1985.1. Agreement to appear at time other than specified in subpoena

Any person who is subpoenaed to appear at a session of court, or at the trial of an issue therein, may, in lieu of appearance at the time specified in the subpoena, agree with the party at whose request the subpoena was issued to appear at another time or upon such notice as may be agreed upon. Any failure to appear pursuant to such agreement may be punished as a contempt by the court issuing the subpoena. The facts establishing or disproving such agreement and the failure to appear may be proved by an affidavit of any person having personal knowledge of the facts.

§ 1985.2. Subpoenas; civil trials, attendance of witnesses; notice

Any subpoena which requires the attendance of a witness at any civil trial shall contain the following notice in a type face designed to call attention to the notice:

Contact the attorney requesting this subpoena, listed above, before the date on which you are required to be in court, if you have any question about the time or date for you to appear, or if you want to be certain that your presence in court is required.

§ 1985.3. Subpoena duces tecum; personal records of consumer

(a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original, any copy of books, documents, other writings, or electronic data pertaining to a consumer and which are maintained by any "witness" which is a physician, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, medical center, clinic, radiology or MRI center, clinical or diagnostic laboratory, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent licensed pursuant to Division 6 (commencing with Section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, secondary school, or postsecondary school as described in Section 76244 of the Education Code.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "Deposition officer" means a person who meets the qualifications specified in Section 2020.420.

(b) Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, if any, and of the notice described in subdivision (e), and proof of service as indicated in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit, if any, served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any other consumer or nonparty whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, the witness, and the deposition officer, a written objection that cites the specific grounds on which production of the personal records should be prohibited.

No witness or deposition officer shall be required to produce personal records after receipt of notice that the motion has been brought by a consumer, or after receipt of a written objection from a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200), of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

(l) If the subpoenaing party is the consumer, and the consumer is the only subject of the subpoenaed records, notice to the consumer, and delivery of the other documents specified in subdivision (b) to the consumer, is not required under this section.

§ 1985.4. Application of procedures in § 1985.3; subpoena duces tecum for records exempt from public disclosure under Public Records Act and maintained by state or local agency

The procedures set forth in Section 1985.3 are applicable to a subpoena duces tecum for records containing "personal information," as defined in Section 1798.3 of the Civil Code which are otherwise exempt from public disclosure under Section 6254 of the Government Code which are maintained by a state or local agency as defined in Section 6252 of the Government Code. For the purposes of this section, "witness" means a state or local agency as defined in Section 6252 of the Government Code and "consumer" means any employee of any state or local agency as defined in Section 6252 of the Government Code, or any other natural person. Nothing in this section shall pertain to personnel records as defined in Section 832.8 of the Penal Code.

§ 1985.5. Subpena for attendance before officer or commissioner out of court; alternative requirement

If a subpena requires the attendance of a witness before an officer or commissioner out of court, it shall, for a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, also require the witness to attend a session of the court issuing the subpena at a time and place thereof to be fixed by said officer or commissioner.

§ 1985.6. Employment records; subpoena duces tecum or production of records; notice and service; motion to quash or modify subpoena

(a) For purposes of this section, the following terms have the following meanings:

(1) "Deposition officer" means a person who meets the qualifications specified in Section 2020.420.

(2) "Employee" means any individual who is or has been employed by a witness subject to a subpoena duces tecum. "Employee" also means any individual who is or has been represented by a labor organization that is a witness subject to a subpoena duces tecum.

(3) "Employment records" means the original or any copy of books, documents, other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee, or by any labor organization that has represented or currently represents the employee.

(4) "Labor organization" has the meaning set forth in Section 1117 of the Labor Code.

(5) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but does not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; the notice described in subdivision (e); and proof of service as provided in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 2, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor, or with whom the minor resides, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the employment records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall either:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the employee or by his or her attorney of record. The witness may presume that the attorney purporting to sign the authorization on behalf of the employee acted with the consent of the employee, and that any objection to the release of records is waived.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit served on an employee or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) employment records about the employee are being sought from the witness named on the subpoena; (2) the employment records may be protected by a right of privacy; (3) if the employee objects to the witness furnishing the records to the party seeking the records, the employee shall file papers with the court prior to the date specified for production on the subpoena; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f)(1) Any employee whose employment records are sought by a subpoena duces tecum may, prior to the date for

production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and the deposition officer at least five days prior to production. The failure to provide notice to the deposition officer does not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

(2) Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, the deposition officer, and the witness a written objection that cites the specific grounds on which production of the employment records should be prohibited.

(3) No witness or deposition officer shall be required to produce employment records after receipt of notice that the motion has been brought by an employee, or after receipt of a written objection from a nonparty employee, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected.

(4) The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witnesses and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) if due diligence by the subpoenaing party has been shown.

(h) This section may not be construed to apply to any subpoena duces tecum that does not request the records of any particular employee or employees and that requires a custodian of records to delete all information that would in any way identify any employee whose records are to be produced.

(i) This section does not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200), of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

(k) If the subpoenaing party is the employee, and the employee is the only subject of the subpoenaed records, notice to the employee, and delivery of the other documents specified in subdivision (b) to the employee, are not required under this section.

§ 1985.7. Medical records; failure to produce; order to show cause

When a medical provider fails to comply with Section 1158 of the Evidence Code, in addition to any other available remedy, the demanding party may apply to the court for an order to show cause why the records should not be produced.

Any order to show cause issued pursuant to this section shall be served upon respondent in the same manner as a summons. It shall be returnable no sooner than 20 days after issuance unless ordered otherwise upon a showing of substantial hardship. The court shall impose monetary sanctions pursuant to Section 1158 of the Evidence Code unless it finds that the person subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

§ 1986. Subpoena; obtainable

A subpoena is obtainable as follows:

(a) To require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein, it is obtainable from the clerk of the court in which the action or proceeding is pending.

(b) To require attendance before a commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any other state in the United States, or before any officer or officers empowered by the laws of the United States to take testimony, it may be obtained from the clerk of the superior court of the county in which the witness is to be examined.

(c) To require attendance out of court, in cases not provided for in subdivision (a), before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it is obtainable from the judge, justice, or other officer before whom the attendance is required.

If the subpoena is to require attendance before a court, or at the trial of an issue therein, it is obtainable from the clerk, as of course, upon the application of the party desiring it. If it is obtained to require attendance before a commissioner or other officer upon the taking of a deposition, it must be obtained, as of course, from the clerk of the superior court of the county wherein the attendance is required upon the application of the party requiring it.

§ 1986.1. Testimony given by journalist under subpoena; immunity rights; notice

(a) No testimony or other evidence given by a journalist under subpoena in a civil or criminal proceeding may be construed as a waiver of the immunity rights provided by subdivision (b) of Section 2 of Article I of the California Constitution.

(b) Because important constitutional rights of a third-party witness are adjudicated when rights under subdivision (b) of Section 2 of Article I of the California Constitution are asserted, except in exigent circumstances a journalist who is subpoenaed in any civil or criminal proceeding shall be given at least five days' notice by the party issuing the subpoena that his or her appearance will be required.

(c) If a trial court holds a journalist in contempt of court in a criminal proceeding notwithstanding subdivision (b) of Section 2 of Article I of the California Constitution, the court shall set forth findings, either in writing or on the record, stating at a minimum, why the information will be of material assistance to the party seeking the evidence, and why alternate sources of the information are not sufficient to satisfy the defendant's right to a fair trial under the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution.

(d) As used in this section, "journalist" means the persons specified in subdivision (b) of Section 2 of Article I of the California Constitution.

§ 1986.5. Witness fees and mileage for persons required to give depositions; fees for production of business records

Any person who is subpoenaed and required to give a deposition shall be entitled to receive the same witness fees and mileage as if the subpoena required him or her to attend and testify before a court in which the action or proceeding is pending. Notwithstanding this requirement, the only fees owed to a witness who is required to produce

business records under Section 1560 of the Evidence Code pursuant to a subpoena duces tecum, but who is not required to personally attend a deposition away from his or her place of business, shall be those prescribed in Section 1563 of the Evidence Code.

§ 1987. Subpoena; notice to produce party or agent; method of service; production of books and documents

(a) Except as provided in Sections 68097.1 to 68097.8, inclusive, of the Government Code, the service of a subpoena is made by delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to the witness at the same time, if demanded by him or her, the fees to which he or she is entitled for travel to and from the place designated, and one day's attendance there. The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. The service may be made by any person. If service is to be made on a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of those persons cannot be located with reasonable diligence, service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is 12 years of age or older. If the minor is alleged to come within the description of Section 300, 601, or 602 of the Welfare and Institutions Code and the minor is not in the custody of a parent or guardian, regardless of the age of the minor, service also shall be made upon the designated agent for service of process at the county child welfare department or the probation department under whose jurisdiction the minor has been placed.

(b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, the witness, upon demand, shall be paid witness fees and mileage before being required to testify. The giving of the notice shall have the same effect as service of a subpoena on the witness, and the parties shall have those rights and the court may make those orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court.

(c) If the notice specified in subdivision (b) is served at least 20 days before the time required for attendance, or within any shorter period of time as the court may order, it may include a request that the party or person bring with him or her books, documents or other things. The notice shall state the exact materials or things desired and that the party or person has them in his or her possession or under his or her control. Within five days thereafter, or any other time period as the court may allow, the party or person of whom the request is made may serve written objections to the request or any part thereof, with a statement of grounds. Thereafter, upon noticed motion of the requesting party, accompanied by a showing of good cause and of materiality of the items to the issues, the court may order production of items to which objection was made, unless the objecting party or person establishes good cause for nonproduction or production under limitations or conditions. The procedure of this subdivision is alternative to the procedure provided by Sections 1985 and 1987.5 in the cases herein provided for, and no subpoena duces tecum shall be required.

Subject to this subdivision, the notice provided in this subdivision shall have the same effect as is provided in subdivision (b) as to a notice for attendance of that party or person.

§ 1987.1. Subpoena; motion and order to quash; other orders

(a) If a subpoena requires the attendance of a witness or the production of books, documents, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably

made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person.

(b) The following persons may make a motion pursuant to subdivision (a):

(1) A party.

(2) A witness.

(3) A consumer described in Section 1985.3.

(4) An employee described in Section 1985.6.

(5) A person whose personally identifying information, as defined in subdivision (b) of Section 1798.79.8 of the Civil Code, is sought in connection with an underlying action involving that person's exercise of free speech rights.

(c) Nothing in this section shall require any person to move to quash, modify, or condition any subpoena duces tecum of personal records of any consumer served under paragraph (1) of subdivision (b) of Section 1985.3 or employment records of any employee served under paragraph (1) of subdivision (b) of Section 1985.6.

§ 1987.2. Award of reasonable expenses and reasonable attorney's fees incurred in making or opposing motion; award of reasonable expenses and attorney's fees in making a motion in an action arising from free speech rights on the Internet

(a) Except as specified in subdivision (b), in making an order pursuant to motion made under subdivision (c) of Section 1987 or under Section 1987.1, the court may in its discretion award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney's fees, if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive.

(b) If a motion is filed under Section 1987.1 for an order to quash or modify a subpoena from a court of this state for personally identifying information, as defined in subdivision (b) of Section 1798.79.8 of the Civil Code, for use in an action pending in another state, territory, or district of the United States, or in a foreign nation, and that subpoena has been served on any Internet service provider, or on the provider of any other interactive computer service, as defined in Section 230(f)(2) of Title 47 of the United States Code, if the moving party prevails, and if the underlying action arises from the moving party's exercise of free speech rights on the Internet and the respondent has failed to make a prima facie showing of a cause of action, the court shall award the amount of the reasonable expenses incurred in making the motion, including reasonable attorney's fees.

§ 1987.3. Service of subpoena duces tecum upon custodian of records or other qualified witness under Evidence Code section 1560

When a subpoena duces tecum is served upon a custodian of records or other qualified witness as provided in Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, and his personal attendance is not required by the terms of the subpoena, Section 1989 shall not apply.

§ 1987.4. Repealed by Stats.1981, c. 1014, 3913, § 1.5

§ 1987.5. Subpoena duces tecum; conditions to validity; original affidavit; deposition subpoenas for production of business records

The service of a subpoena duces tecum is invalid unless at the time of such service a copy of the affidavit upon which the subpoena is based is served on the person served with the subpoena. In the case of a subpoena duces tecum which requires appearance and the production of matters and things at the taking of a deposition, the subpoena shall not be valid unless a copy of the affidavit upon which the subpoena is based and the designation of the materials to be produced, as set forth in the subpoena, is attached to the notice of taking the deposition served upon each party or its attorney as provided in Chapter 3 (commencing with Section 2002) and in Title 4 (commencing with Section 2016.010). If matters and things are produced pursuant to a subpoena duces tecum in violation of this section, any other party to the action may file a motion for, and the court may grant, an order providing appropriate relief, including, but not limited to, exclusion of the evidence affected by the violation, a retaking of the deposition notwithstanding any other limitation on discovery proceedings, or a continuance. The party causing the subpoena to be served shall retain the original affidavit until final judgment in the action, and shall file the affidavit with the court only upon reasonable request by any party or witness affected thereby. This section does not apply to deposition subpoenas commanding only the production of business records for copying under Article 4 (commencing with Section 2020.410) of Chapter 6 of Title 4.

§ 1988. Subpoena; service; witness concealed

If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any Court or Judge, or any officer issuing the subpoena, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the Sheriff of the county serve the subpoena; and the Sheriff must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

§ 1989. Residency requirements for attendance of witnesses

A witness, including a witness specified in subdivision (b) of Section 1987, is not obliged to attend as a witness before any court, judge, justice or any other officer, unless the witness is a resident within the state at the time of service.

§ 1990. Person present; compelling to testify

A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such Court or officer.

§ 1991. Disobedience to subpoena; refusal to be sworn, to answer as witness, or to subscribe affidavit or deposition; contempt; report of disobedience

Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court issuing the subpoena.

When the subpoena, in any such case, requires the attendance of the witness before an officer or commissioner out of court, it is the duty of the officer or commissioner to report any disobedience or refusal to be sworn or to answer a question or to subscribe an affidavit or deposition when required, to the court issuing the subpoena. The witness shall not be punished for any refusal to be sworn or to answer a question or to subscribe an affidavit or

deposition, unless, after a hearing upon notice, the court orders the witness to be sworn, or to so answer or subscribe and then only for disobedience to the order.

Any judge, justice, or other officer mentioned in subdivision (c) of Section 1986, may report any disobedience or refusal to be sworn or to answer a question or to subscribe an affidavit or deposition when required to the superior court of the county in which attendance was required; and the court thereupon has power, upon notice, to order the witness to perform the omitted act, and any refusal or neglect to comply with the order may be punished as a contempt of court.

In lieu of the reporting of the refusal as hereinabove provided, the party seeking to obtain the deposition or to have the deposition or affidavit signed, at the time of the refusal may request the officer or commissioner to notify the witness that at a time stated, not less than five days nor more than 20 days from the date of the refusal, he or she will report the refusal of the witness to the court and that the party will, at that time, or as soon thereafter as he or she may be heard, apply to the court for an order directing the witness to be sworn, or to answer as a witness, or subscribe the deposition or affidavit, as the case may be, and that the witness is required to attend that session of the court.

The officer or commissioner shall enter in the record of the proceedings an exact transcription of the request made of him or her that he or she notify the witness that the party will apply for an order directing the witness to be sworn or to answer as a witness or subscribe the deposition or affidavit, and of his or her notice to the witness, and the transcription shall be attached to his or her report to the court of the refusal of the witness. The report shall be filed by the officer with the clerk of the court issuing the subpoena, and the witness shall attend that session of the court, and for failure or refusal to do so may be punished for contempt.

At the time so specified by the officer, or at a subsequent time to which the court may have continued the matter, if the officer has theretofore filed a report showing the refusal of the witness, the court shall hear the matter, and without further notice to the witness, may order the witness to be sworn or to answer as a witness or subscribe the deposition or affidavit, as the case may be, and may in the order specify the time and place at which compliance shall be made or to which the taking of the deposition is continued. Thereafter if the witness refuses to comply with the order he or she may be punished for contempt.

§ 1991.1. Depositions; disobedience to subpoena or refusal to be sworn; punishment

Disobedience to a subpoena requiring attendance of a witness before an officer out of court in a deposition taken pursuant to Title 4 (commencing with Section 2016.010), or refusal to be sworn as a witness at that deposition, may be punished as contempt, as provided in subdivision (e) of Section 2023.030, without the necessity of a prior order of court directing compliance by the witness.

§ 1991.2. Depositions; applicability of section 1991

The provisions of Section 1991do not apply to any act or omission occurring in a deposition taken pursuant to Title 4 (commencing withSection 2016.010). The provisions of Chapter 7 (commencing with Section 2023.010) of Title 4 are exclusively applicable.

§ 1992. Disobedience to subpoena; forfeiture; damages

A person failing to appear pursuant to a subpoena or a court order also forfeits to the party aggrieved the sum of five hundred dollars ($500), and all damages that he or she may sustain by the failure of the person to appear pursuant to the subpoena or court order, which forfeiture and damages may be recovered in a civil action.

§ 1993. Warrant for absent witness

(a)(1) As an alternative to issuing a warrant for contempt pursuant to paragraph (5) or (9) of subdivision (a) of Section 1209, the court may issue a warrant for the arrest of a witness who failed to appear pursuant to a subpoena or a person who failed to appear pursuant to a court order. The court, upon proof of the service of the subpoena or order, may issue a warrant to the sheriff of the county in which the witness or person may be located and the sheriff shall, upon payment of fees as provided for in Section 26744.5 of the Government Code, arrest the witness or person and bring him or her before the court.

(2) Before issuing a warrant for a failure to appear pursuant to a subpoena pursuant to this section, the court shall issue a "failure to appear" notice informing the person subject to the subpoena that a failure to appear in response to the notice may result in the issuance of a warrant. This notice requirement may be omitted only upon a showing that the appearance of the person subject to the subpoena is material to the case and that urgency dictates the person's immediate appearance.

(b) The warrant shall contain all of the following:

(1) The title and case number of the action.

(2) The name and physical description of the person to be arrested.

(3) The last known address of the person to be arrested.

(4) The date of issuance and county in which it is issued.

(5) The signature of the magistrate issuing the warrant, the title of his or her office, and the name of the court.

(6) A command to arrest the person for failing to appear pursuant to the subpoena or court order, and specifying the date of service of the subpoena or court order.

(7) A command to bring the person to be arrested before the issuing court, or the nearest court if in session, for the setting of bail in the amount of the warrant or to release on the person's own recognizance. Any person so arrested shall be released from custody if he or she cannot be brought before the court within 12 hours of arrest, and the person shall not be arrested if the court will not be in session during the 12-hour period following the arrest.

(8) A statement indicating the expiration date of the warrant as determined by the court.

(9) The amount of bail.

(10) An endorsement for nighttime service if good cause is shown as provided in Section 840 of the Penal Code.

(11) A statement indicating whether the person may be released upon a promise to appear as provided by Section 1993.1. The court shall permit release upon a promise to appear, unless it makes a written finding that the urgency and materiality of the person's appearance in court precludes use of the promise to appear process.

(12) The date and time to appear in court if arrested and released pursuant to paragraph (11).

§ 1993.1. Release of arrested witness upon promise to appear

(a) If authorized by the court as provided by paragraph (11) of subdivision (b) of Section 1993, the sheriff may release the person arrested upon his or her promise to appear as provided in this section.

(b) The sheriff shall prepare in duplicate a written notice to appear in court, containing the title of the case, case number, name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. In addition, the notice shall advise the person arrested of the provisions of Section 1992.

(c) The date and time specified in the notice to appear in court shall be that determined by the issuing court pursuant to paragraph (12) of subdivision (b) of Section 1993.

(d) The sheriff shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice, which shall be retained by the sheriff, and the sheriff may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The sheriff shall, as soon as practicable, file the original notice with the issuing court. The notice may be electronically transmitted to the court.

(f) The person arrested shall be released unless one of the following is a reason for nonrelease, in which case the arresting officer either may release the person or shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) There were one or more additional outstanding arrest warrants for the person.

(4) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

§ 1993.2. Failure of released witness to appear as promised

If a person arrested on a civil bench warrant issued pursuant to Section 1993 fails to appear after being released on a promise to appear, the court may issue another warrant to bring the person before the court or assess a civil assessment in the amount of not more than one thousand dollars ($1,000), which shall be collected as follows:

(a) The assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the person by first-class mail to the address shown on the promise to appear or to the person's last known address. If the person appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine, the court shall vacate the assessment.

(b) The assessment imposed under subdivision (a) may be enforced in the same manner as a money judgment in a

limited civil case, and shall be subject to the due process requirements governing defense of actions and collection of civil money judgments generally.

§ 1994. Warrants; contents; direction; execution

Every warrant of commitment, issued by a court or officer pursuant to this chapter, shall specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, that question shall be stated in the warrant.

§ 1995. Witness a prisoner: deposition; production before court; courts authorized to order production

If the witness be a prisoner, confined in a jail within this state, an order for his examination in the jail upon deposition, or for his temporary removal and production before a court or officer may be made as follows:

1. By the court itself in which the action or special proceeding is pending, unless it be a small claims court.

2. By a justice of the Supreme Court, or a judge of the superior court of the county where the action or proceeding is pending, if pending before a small claims court, or before a judge or other person out of court.

§ 1996. Witness a prisoner; order for production before court; motion; supporting affidavit

Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

§ 1997. Witness a prisoner; production before court in county of imprisonment; deposition

If the witness be imprisoned in a jail in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

§§ 1998 to 1998.5. Repealed by Stats.1965, c. 299, p. 1363, §§ 118 to 123, operative Jan. 1, 1967

§§ 1998 to 1998.5. Repealed by Stats.1965, c. 299, p. 1363, §§ 118 to 123, operative Jan. 1, 1967

END OF DOCUMENT

Supreme Court

THE

STATUTES OF CALIFORNIA,

PASSED AT THE

SECOND SESSION

OF THE

LEGISLATURE:

BEGUN ON THE SIXTH DAY OF JANUARY, 1851, AND ENDED ON THE FIRST DAY OF MAY, 1851, AT THE CITY OF SAN JOSE.

EUGENE CASSERLY, STATE PRINTER.

1851.

CHAPTER II.

MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES, AND THEIR RIGHTS AND DUTIES.

What a subpœna may require.

§ 402. A subpœna may require not only the personal attendance of the person to whom it is directed at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents, or other things under his control. No witnesses shall be required to attend before any Court, Judge, Justice, or other officer, out of the county in which he resides.

Subpœna, whom issued.

§ 403. The subpœna shall be issued as follows:

1st. To require attendance before a Court, or at the trial of an issue therein, it shall be issued in the name and under the seal of the Court before which the attendance is required, or in which the issue is pending:

2d. To require attendance out of Court before a Judge, Justice, or other officer, authorized to administer oaths, or take testimony in any matter, under the laws of this State; it shall be issued by the Judge, Justice, or other officer before whom the attendance is required:

3d. To require attendance before a commissioner appointed to take testimony by a Court of any other State or County, it may be issued by any Judge or Justice of the Peace, in places within their respective jurisdictions.

Subpœna, how served.

§ 404. The service of a subpœna shall be made by showing the original, and delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any person.

Service of subpœna on person concealed.

§ 405. If a witness be concealed in a building or vessel, so as to prevent the service of a subpœna upon him, any Court or Judge, or any officer issuing the subpœna, may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the Sheriff of the county serve the subpœna; and the Sheriff shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

Parties present in Court may be required to testify.

§ 406. A person present in Court, or before a judicial officer, may be required to testify, in the same manner as if he were in attendance upon a subpœna issued by such Court or officer.

Witness to attend pursuant to subpœna.

§ 407. It shall be the duty of a witness, duly served with a subpœna, to attend at the time appointed, with any papers under his control required by the subpœna, to answer all pertinent and legal questions; and unless sooner discharged, to remain till the testimony is closed.

When witness must answer.

§ 408. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to

subject him to punishment for a felony; nor need give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact at issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

Disobeying subpœna, or refusing to be sworn, or contempt.

§ 409. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the Court, or officer issuing the subpœna, or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed, or his answer stricken out.

Penalty for disobeying subpœna

§ 410. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damages may be recovered in a civil action.

Witness failing to attend may be arrested.

§ 411. In case of failure of a witness to attend, the Court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the Sheriff of the County to arrest the witness and bring him before the Court or officer where his attendance was required.

Examination of witness confined in jail.

§ 412. If the witness be a prisoner, confined in a jail or prison within this State, for any other cause than a sentence for felony, an order for his examination in the prison upon deposition, or for his temporary removal and production before a Court or officer for the purpose of being orally examined, may be made, as follows:

1st. By the Court itself, in which the action or special proceeding is pending:

2d. By a Judge of the Supreme Court, District Court, or County Judge of the County where the action or proceeding is pending, if before a Judge or other person out of Court.

Order for such examination, how made.

§ 413. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Examination, how to be taken.

§ 414. If the witness be imprisoned in the County where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required. In all other cases, his examination, when allowed, shall be taken upon deposition.

Witness privileged from arrest.

§ 415. Every person who has been in good faith served with a subpœna to attend as a witness before a Court, Judge, Commissioner, Referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest, in a civil action, while going to the place of attendance, necessarily remaining there, and returning therefrom.

Arrest of a witness to be void.

§ 416. The arrest of a witness contrary to the last section shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for

West's Annotated California Codes Currentness
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 3. Executive Department (Refs & Annos)
Part 1. State Departments and Agencies (Refs & Annos)
Chapter 2. State Departments (Refs & Annos)
Article 2. Investigations and Hearings (Refs & Annos)
→ **§ 11180. Subjects of investigations and actions**

The head of each department may make investigations and prosecute actions concerning:

(a) All matters relating to the business activities and subjects under the jurisdiction of the department.

(b) Violations of any law or rule or order of the department.

(c) Such other matters as may be provided by law.

§ 11180.5. Unlawful activities; assistance in conducting investigations

At the request of a prosecuting attorney or the Attorney General, any agency, bureau, or department of this state, any other state, or the United States may assist in conducting an investigation of any unlawful activity that involves matters within or reasonably related to the jurisdiction of the agency, bureau, or department. This investigation may be made in cooperation with the prosecuting attorney or the Attorney General. The prosecuting attorney or the Attorney General may disclose documents or information acquired pursuant to the investigation to another agency, bureau, or department if the agency, bureau, or department agrees to maintain the confidentiality of the documents or information received to the extent required by this article.

§ 11181. Powers in connection with investigations and actions

In connection with any investigation or action authorized by this article, the department head may do any of the following:

(a) Inspect and copy books, records, and other items described in subdivision (e).

(b) Hear complaints.

(c) Administer oaths.

(d) Certify to all official acts.

(e) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, any writing as defined by Section 250 of the Evidence Code, tangible things, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

(f) Promulgate interrogatories pertinent or material to any inquiry, investigation, hearing, proceeding, or action.

(g) Divulge information or evidence related to the investigation of unlawful activity discovered from interrogatory answers, papers, books, accounts, documents, and any other item described in subdivision (e), or testimony, to the Attorney General or to any prosecuting attorney of this state, any other state, or the United States who has a responsibility for investigating the unlawful activity investigated or discovered, or to any governmental agency responsible for enforcing laws related to the unlawful activity investigated or discovered, if the Attorney General, prosecuting attorney, or agency to which the information or evidence is divulged agrees to maintain the confidentiality of the information received to the extent required by this article.

(h) Present information or evidence obtained or developed from the investigation of unlawful activity to a court or at an administrative hearing in connection with any action or proceeding.

§ 11182. Delegation of powers

The head of a department may delegate the powers conferred upon him by this article to any officer of the department he authorizes to conduct the investigation or hearing.

§ 11183. Confidential character of information acquired: offenses

Except in a report to the head of the department or when called upon to testify in any court or proceeding at law or as provided in Section 11180.5 or subdivisions (g) and (h) of Section 11181, an officer shall not divulge any information or evidence acquired by the officer from the interrogatory answers or subpoenaed private books, documents, papers, or other items described in subdivision (e) of Section 11181 of any person while acting or claiming to act under any authorization pursuant to this article, in respect to the confidential or private transactions, property or business of any person. An officer who divulges information or evidence in violation of this section is guilty of a misdemeanor and disqualified from acting in any official capacity in the department.

§ 11184. Process; service; compensation

(a) In any hearing in any part of the state or in any investigation conducted under this article, the head of the department shall issue process and subpoenas in a manner consistent with the California Constitution and the United States Constitution, and the process and subpoenas shall be served in the same manner as provided for the service of a summons as described in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Service of process and subpoenas may be effectuated by any person designated for that purpose by the head of the department. The person serving any process or a subpoena may receive compensation as is allowed by the head of the department not to exceed the fees prescribed by law for similar service. This compensation shall be paid in the manner provided in this article for the payment of the fees of witnesses.

(b) If the subpoena requires oral testimony from a witness who is not a natural person, the subpoena shall describe, with reasonable particularity, the matters on which examination is requested. In that event, the subpoenaed witness shall designate and produce at the hearing those natural persons who are most qualified to testify on behalf of the subpoenaed witness about those matters to the extent of any information known or reasonably available to the subpoenaed witness. The subpoena shall notify the witness named in the subpoena of its duty to designate and produce natural persons to testify as described in this subdivision.

§ 11185. Witnesses, obligation to attend

(a) If the witness named in the subpoena is a natural person, the person is not obliged to attend as a witness in any matter under this article at a place out of the county in which he or she resides, unless the distance is less than 75

miles from his or her place of residence.

(b) If the witness named in the subpoena is not a natural person and has an office within this state, the subpoena may provide that the testimony of the persons designated to appear on behalf of the witness, as described in subdivision (b) of Section 11184, shall be given in the county in which the witness named in the subpoena has its principal executive or business office in this state or within 150 miles of that location.

(c) If the witness conducts business in this state but does not reside or have an office within this state, the subpoena may provide that oral testimony shall be given at a location that is within 75 miles of the residence or executive or business office of the witness.

(d) If the witness does not reside, have an office, or conduct business in this state, the testimony shall be given and documents and other items produced at a location set by a court.

(e) The department head may require any person who resides or conducts business in this state to produce the documents and other items described in subdivision (e) of Section 11181 at a location in the county in which the department head or the Attorney General maintains an office.

(f) Nothing in this section prevents the department head and subpoenaed person from agreeing that testimony may be given or production made at any location.

§ 11186. Witnesses, jurisdiction of superior court to compel attendance, etc.

The superior court in the county in which any hearing is held or any investigation is conducted under the direction of the head of a department or the county in which testimony is designated to be given or documents or other items are designated to be produced, has jurisdiction to compel the attendance of witnesses, the giving of testimony, the answering without objection of interrogatories, and the production, inspection, and copying of papers, books, accounts, documents, and other items described in subdivision (e) of Section 11181 as required by any subpoena issued by the department head.

§ 11187. Order to compel witness to answer interrogatories or to attend and testify or produce papers required by subpoena

(a) Except as provided in subdivision (c), if any witness refuses to answer any interrogatory or to attend or testify or produce or permit the inspection or copying of any papers or other items described in subdivision (e) of Section 11181 required by subpoena, the head of the department may petition the superior court in the county in which the hearing or investigation is pending or the county in which testimony is designated in the subpoena to be given or documents or other items are designated in the subpoena to be produced, for an order compelling the person to answer the interrogatories or to attend and testify or produce and permit the inspection and copying of the papers or other items required by the subpoena before the officer named in the subpoena.

(b) The petition shall set forth all of the following:

(1) That due notice of the time and place for answering the interrogatories or testifying or the attendance of the person or the production of the papers or other items described in subdivision (e) of Section 11181 was given.

(2) That the person was subpoenaed or required to answer interrogatories in the manner prescribed in this article.

(3) That the person failed and refused to answer the interrogatories or to attend or testify or produce or permit the

inspection or copying of the papers or other items required by subpoena before the officer in the cause or proceeding named in the subpoena, or has refused to answer questions propounded to him or her in the course of the investigation or hearing.

(c) If the witness named in the subpoena does not reside or conduct business in this state, the department head may seek to compel the witness' testimony and production, inspection, and copying of documents or other items described in subdivision (e) of Section 11181 in the manner provided for the enforcement of a deposition notice to a nonparty as described in Section 2026.010 or 2027.010 of the Code of Civil Procedure or in any other manner authorized by any law.

(d) If any witness objects and based on that objection refuses to answer any interrogatory or to attend or testify or produce or permit the inspection or copying of any papers or other items described in subdivision (e) of Section 11181 as required by a subpoena, the witness shall state the objection and the validity of the objection shall be determined exclusively in a proceeding brought by the head of the department to compel compliance as provided in this section.

§ 11188. Witnesses; order to show cause; order to appear; etc.; contempt

Upon the filing of the petition the court shall enter an order directing the person to appear before the court at a specified time and place and then and there show cause why he or she has not attended, testified, answered interrogatories, or produced or permitted the inspection or copying of the papers or other items described in subdivision (e) of Section 11181 as required. A copy of the order shall be served upon him or her in the manner provided for the service of a summons described in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. If it appears to the court that the subpoena was regularly issued, or the interrogatories were regularly promulgated, by the head of the department, the court shall enter an order that the person appear before the officer named in the subpoena at the time and place fixed in the order and testify or produce and permit the inspection and copying of the required papers or other items described in subdivision (e) of Section 11181 as required or answer the interrogatories without objection. At the request of the department head, the court may issue any additional order to aid the implementation of the order enforcing compliance with the subpoena, including the issuance of a commission or letters rogatory in the manner provided for the enforcement of a deposition notice to a nonparty as described in Section 2026 or 2027 of the Code of Civil Procedure. Upon failure to obey the order, the person shall be dealt with as for contempt of court.

§ 11189. Deposition; petition; order; enforcement

In any matter pending before a department head, the department head may cause the deposition of persons residing within or without the state to be taken by causing a petition to be filed in the Superior Court in the County of Sacramento reciting the nature of the matter pending, the name and residence of the person whose testimony is desired, and asking that an order be made requiring the person to appear and testify before an officer named in the petition for that purpose. Upon the filing of the petition the court may make an order requiring the person to appear and testify in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. In the same manner the superior courts may compel the attendance of persons as witnesses, and the production of papers, books, accounts, and documents, under Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure, and may punish for contempt.

§ 11190. Witnesses, right of party to attendance

Any party to any departmental hearing has the right to the attendance of witnesses in his behalf at the hearing or upon deposition upon making request therefor to the head of the department, designating the persons sought to be

subpenaed, [FN1] and depositing with the officer before whom the hearing is to be had the necessary fees and mileage.

[FN1] So in chaptered copy.

§ 11191. Witnesses, fees and mileage

Each witness, other than an officer or employee of the State or of a political subdivision of the State, who appears by order of the head of a department shall receive for his attendance the same fees and all witnesses shall receive the same mileage allowed by law to a witness in civil cases. The amounts shall be paid by the party at whose request the witness is subpenaed. [FN1] The mileage, and fees, if any, of a witness subpenaed [FN1] by the head of a department, but not at the request of a party, shall be paid from the funds appropriated for the use of the department in the same manner as other expenses of the department are paid.

[FN1] So in chaptered copy.

END OF DOCUMENT

STATUTES OF CALIFORNIA

FIFTY-SIXTH SESSION OF THE LEGISLATURE

1945

BEGAN ON MONDAY, JANUARY EIGHTH, AND
ADJOURNED SATURDAY, JUNE SIXTEENTH,
NINETEEN HUNDRED FORTY-FIVE

enacted, shall be construed to mean the department, as though the title of the department had been specifically set forth in the law.

Administration of laws

11160. Whenever a department is invested with the power and is charged with the duty of administering and enforcing any law which imposes a duty or jurisdiction or confers an authority upon any State agency, deputy or employee, to administer its provisions, the duty, jurisdiction, and authority are hereby imposed upon and transferred to the department and its officers, deputies and employees with the same effect as if the name of the department occurred in the law in each instance in lieu of the name of the State agency, the member, officer, deputy or employee, as the case may be.

Existing obligations and duties

11161. Every person is subject to the same obligations and duties, and has the same rights as if the rights, powers and duties imposed upon and transferred to a department were exercised by the State agency, deputy or employee designated in the laws administered by departments created in conformity with this chapter. Every person is subject to the same penalties, civil or criminal, for failure to perform any obligation, or duty, or for doing a prohibited act as if the obligation or duty arose from or was prohibited by the State agency, deputy or employee, designated in the laws administered by the department.

Existing penalties

11162. Every State officer, deputy and employee is subject to the same penalties, civil or criminal, for any offense as are prescribed by existing law for the same offense by any officer, deputy or employee whose powers or duties are devolved upon him under any law creating a new department. No law creating a new department affects any act done, ratified, or confirmed, or any right accrued or established, or any offense committed, or any action or proceeding had or commenced in a civil or criminal cause before such law takes effect; but such right may be enforced, offense punished and action or proceeding prosecuted and continued by the department having or acquiring jurisdiction of the subject matter to which such litigation or proceeding pertains, with the same effect as if the transfer of such rights powers, duties, responsibilities and jurisdiction had not been made to the department.

Article 2. Investigations and Hearings

Investigations and prosecutions

11180. The head of each department may make investigations and prosecute actions concerning:

(a) All matters relating to the business activities and subjects under the jurisdiction of the department.

(b) Violations of any law or rule or order of the department.

(c) Such other matters as may be provided by law.

Powers of head of department

11181. In connection with these investigations and actions he may:

(a) Inspect books and records.

(b) Hear complaints.

(c) Administer oaths.

(d) Certify to all official acts.

(e) Issue subpenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding pertinent or material thereto in any part of the State.

Delegation of powers

11182. The head of a department may delegate the powers conferred upon him by this article to any officer of the department he authorizes to conduct the investigation or hearing.

Confidential information

11183. Except in his report to the head of the department or when called upon to testify in any court or proceeding at law, any officer who divulges any information acquired by him from the private books, documents or papers of any person while acting or claiming to act under any authorization pursuant to this article, in respect to the confidential or private transactions, property or business of any person is guilty of a misdemeanor and disqualified from acting in any official capacity in the department.

Process

11184. In any hearing in any part of the State the process issued by the head of a department extends to all parts of the State and may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the head of the department. The person serving any such process may receive such compensation as is allowed by the head of the department not to exceed the fees prescribed by law for similar service. Such compensation shall be paid in the manner provided in this article for the payment of the fees of witnesses.

Attendance as witness

11185. A person is not obliged to attend as a witness in any matter under this article at a place out of the county in which he resides, unless the distance is less than 50 miles from his place of residence.

Enforcing attendance, etc

11186. The superior court in the county in which any hearing is held under the direction of the head of a department has jurisdiction to compel the attendance of witnesses, the giving of testimony and the production of papers, books, accounts and documents as required by any subpena issued by the head.

Petition to superior court

11187. If any witness refuses to attend or testify or produce any papers required by such subpena the head of the department may petition the superior court in the county in which the hearing is pending for an order compelling the person to attend and testify or produce the papers required by the subpena before the officer named in the subpena

The petition shall set forth that:

(a) Due notice of the time and place of attendance of the person or the production of the papers has been given.

(b) The person has been subpenaed in the manner prescribed in this article.

(c) He has failed and refused to attend or produce the papers required by subpena before the officer in the cause or proceeding named in the subpena, or has refused to answer questions propounded to him in the course of the investigation or hearing.

Proceedings in superior court

11188. Upon the filing of the petition the court shall enter an order directing the person to appear before the court at a specified time and place and then and there show cause why he has not attended or testified or produced the papers as required. A copy of the order shall be served upon him. If it appears to the court that the subpena was regularly issued by the head of the department, the court shall enter an order that the person appear before the officer named in the subpena at the time and place fixed in the order and testify or produce the required papers. Upon failure to obey the order, the person shall be dealt with as for contempt of court.

Depositions

11189. In any matter pending before him a department head may cause the deposition of persons residing within or without the State to be taken by causing a petition to be filed in the Superior Court in the County of Sacramento reciting the nature of the matter pending, the name and residence of the person whose testimony is desired, and asking that an order be made requiring him to appear and testify before an officer named in the petition for that purpose. Upon the filing of the petition the court may make an order requiring the person to appear and testify in the manner prescribed by law for like depositions in civil actions in the superior courts of this State. In the same manner the superior courts may compel the attendance of persons as witnesses, the production of papers, books, accounts, and documents, and may punish for contempt.

Right to witnesses

11190. Any party to any departmental hearing has the right to the attendance of witnesses in his behalf at the hearing or upon deposition upon making request therefor to the head of the department, designating the persons sought to be subpenaed, and depositing with the officer before whom the hearing is to be had the necessary fees and mileage.

Witness fees and mileage

11191. Each witness, other than an officer or employee of the State or of a political subdivision of the State, who appears by order of the head of a department shall receive for his attendance the same fees and all witnesses shall receive the same mileage allowed by law to a witness in civil cases. The amounts shall be paid by the party at whose request the witness is subpenaed. The mileage, and fees, if any, of a witness subpenaed by the head of a department, but not at the request of a party, shall be paid from the funds appropriated for the use of the department in the same manner as other expenses of the department are paid.

CHAPTER 3. INTERAGENCY SERVICES AND TRANSACTIONS

Article 1. General

Service for special fund agency

11250. Whenever a State agency supported from the General Fund renders services or furnishes materials to a State agency not supported from the General Fund, the cost of the services or materials is a charge against the fund from which is derived the support of the State agency receiving the services or materials.

C

Effective: January 1, 2008

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 4. Grand Jury Proceedings (Refs & Annos)
Chapter 3. Powers and Duties of Grand Jury (Refs & Annos)
Article 4. Conduct of Investigations (Refs & Annos)
→ § 939.2. Subpoena of witnesses; issuance

A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the district attorney, his investigator or, upon request of the grand jury, by any judge of the superior court, for witnesses in the state, in support of the prosecution, for those witnesses whose testimony, in his opinion is material in an investigation before the grand jury, and for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

CREDIT(S)

(Added by Stats.1959, c. 501, p. 2453, § 2. Amended by Stats.1971, c. 1196, p. 2292, § 1.)

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

The 1971 amendment authorized the issuance of a subpoena by an investigator for the district attorney.

CROSS REFERENCES

Attorney General, authority to issue subpoenas, see Penal Code § 923.
"Grand jury" defined, see Penal Code § 888.
No requirement to hear evidence for defendant, but obligation to weigh all evidence submitted, see Penal Code § 939.7.
Witnesses in general, see Evidence Code § 700 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Challenge to composition of San Francisco grand jury. Jon Van Dyke and Sidney M. Wolinsky (1976) 27 Hastings L.J. 565.

LIBRARY REFERENCES

2009 Electronic Pocket Part Update

Grand Jury 36.4(1).
C.J.S. Grand Juries § 41.

RESEARCH REFERENCES

Encyclopedias

In General; Admissibility, Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 611.

Witnesses; Self-Incrimination, Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 612.

Treatises and Practice Aids

Role of Prosecutor and Grand Jurors in Subpoenaing Evidence, Grand Jury Law and Practice § 6:2.

4 Witkin Cal. Crim. L. 3d Pretrial Proceedings § 161, (S 161) Witnesses.

4 Witkin Cal. Crim. L. 3d Pretrial Proceedings § 161A, (S 161A) (New) Subpena Duces Tecum.

UNITED STATES SUPREME COURT

Grand jury subpoenas, standard of review, relevancy challenge, see U.S. v. R. Enterprises, Inc., 1991, 111 S.Ct. 722, 498 U.S. 292, 112 L.Ed.2d 795, on remand 955 F.2d 229.

NOTES OF DECISIONS

1. Construction and application

The grand jury is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. M.B. v. Superior Court (App. 2 Dist. 2002) 127 Cal.Rptr.2d 454, 103 Cal.App.4th 1384. Grand Jury 1; Grand Jury 25

2. Subpoena duces tecum

Grand jury, in investigating allegations of child molestation and sexual abuse by three priests, had the power to issue subpoenas duces tecum seeking production all documents in possession or control of archdiocese's custodian of records, including confidential personnel files, that related in any way to the allegations. M.B. v. Superior Court (App. 2 Dist. 2002) 127 Cal.Rptr.2d 454, 103 Cal.App.4th 1384. Grand Jury 36.4(1)

Grand juries have the power, stemming from both common law tradition and statutory enactment, to issue subpoe-

nas duces tecum. M.B. v. Superior Court (App. 2 Dist. 2002) 127 Cal.Rptr.2d 454, 103 Cal.App.4th 1384. Grand Jury 36.4(1)

3. Good cause affidavits

Grand jury subpoenas duces tecum were not facially defective for failing to be served with good cause affidavits. M.B. v. Superior Court (App. 2 Dist. 2002) 127 Cal.Rptr.2d 454, 103 Cal.App.4th 1384. Grand Jury 36.4(1)

4. Motion to quash

Third-party intervention for the purpose of filing a motion to quash a subpoena is generally permitted so that evidentiary privileges are not sacrificed just because the subpoena recipient lacks sufficient self-interest to object. M.B. v. Superior Court (App. 2 Dist. 2002) 127 Cal.Rptr.2d 454, 103 Cal.App.4th 1384. Witnesses 217

Unelaborated assertion, in petitions for writ of mandate to direct trial court to quash grand jury subpoenas, that one petitioner had since been charged by criminal complaint and statute of limitations had expired as to another petitioner, without more, was insufficient to warrant quashing subpoenas. M.B. v. Superior Court (App. 2 Dist. 2002) 127 Cal.Rptr.2d 454, 103 Cal.App.4th 1384. Grand Jury 36.9(2)

5. Burden of proof

The law presumes, absent a strong showing to the contrary, that a grand jury acts within the legitimate scope of its authority; consequently, a grand jury subpoena issued through normal channels is presumed to be reasonable, and the burden of showing unreasonableness must be on the recipient who seeks to avoid compliance. M.B. v. Superior Court (App. 2 Dist. 2002) 127 Cal.Rptr.2d 454, 103 Cal.App.4th 1384. Grand Jury 36.4(1)

West's Ann. Cal. Penal Code § 939.2, CA PENAL § 939.2

Current with legislation through Ch. 765 of the 2008 Reg.Sess., Ch. 1 of the 2007-2008 1st Ex.Sess., Ch. 1 of the 2007-2008 2nd Ex.Sess., Ch. 7 of the 2007-2008 3rd Ex.Sess., and all propositions on 2008 ballots.

END OF DOCUMENT

Effective: January 1, 2002

West's Annotated California Codes Currentness
Welfare and Institutions Code (Refs & Annos)
Division 9. Public Social Services (Refs & Annos)
Part 4. Services for the Care of Children (Refs & Annos)
Chapter 1. Foster Care Placement (Refs & Annos)

→ § 16010. Health and education records of minor; inclusion in case plan on placement; disclosure of information to prospective caretakers; review and update

(a) When a child is placed in foster care, the case plan for each child recommended pursuant to Section 358.1 shall include a summary of the health and education information or records, including mental health information or records, of the child. The summary may be maintained in the form of a health and education passport, or a comparable format designed by the child protective agency. The health and education summary shall include, but not be limited to, the names and addresses of the child's health, dental, and education providers, the child's grade level performance, the child's school record, assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement, a record of the child's immunizations and allergies, the child's known medical problems, the child's current medications, past health problems and hospitalizations, a record of the child's relevant mental health history, the child's known mental health condition and medications, and any other relevant mental health, dental, health, and education information concerning the child determined to be appropriate by the Director of Social Services. If any other provision of law imposes more stringent information requirements, then that section shall prevail.

(b) Additionally, any court report or assessment required pursuant to subdivision (g) of Section 361.5, Section 366.1, subdivision (d) of Section 366.21, or subdivision (b) of Section 366.22 shall include a copy of the current health and education summary described in subdivision (a).

(c) As soon as possible, but not later than 30 days after initial placement of a child into foster care, the child protective agency shall provide the caretaker with the child's current health and education summary as described in subdivision (a). For each subsequent placement, the child protective agency shall provide the caretaker with a current summary as described in subdivision (a) within 48 hours of the placement.

(d)(1) Notwithstanding Section 827 or any other provision of law, the child protective agency may disclose any information described in this section to a prospective caretaker or caretakers prior to placement of a child if all of the following requirements are met:

(A) The child protective agency intends to place the child with the prospective caretaker or caretakers.

(B) The prospective caretaker or caretakers are willing to become the adoptive parent or parents of the child.

(C) The prospective caretaker or caretakers have an approved adoption assessment or home study, a foster family home license, certification by a licensed foster family agency, or approval pursuant to the requirements in Sections 361.3 and 361.4.

(2) In addition to the information required to be provided under this section, the child protective agency may disclose to the prospective caretaker specified in paragraph (1), placement history or underlying source documents that are provided to adoptive parents pursuant to subdivisions (a) and (b) of Section 8706 of the Family Code.

(e) The child's caretaker shall be responsible for obtaining and maintaining accurate and thorough information from physicians and educators for the child's summary as described in subdivision (a) during the time that the child is in the care of the caretaker. On each required visit, the child protective agency or its designee family foster agency shall inquire of the caretaker whether there is any new information that should be added to the child's summary as described in subdivision (a). The child protective agency shall update the summary with such information as appropriate, but not later than the next court date or within 48 hours of a change in placement. The child protective agency or its designee family foster agency shall take all necessary steps to assist the caretaker in obtaining relevant health and education information for the child's health and education summary as described in subdivision (a).

(f) At the initial hearing, the court shall direct each parent to provide to the child protective agency complete medical, dental, mental health, and educational information, and medical background, of the child and of the child's mother and the child's biological father if known. The Judicial Council shall create a form for the purpose of obtaining health and education information from the child's parents or guardians at the initial hearing. The court shall determine at the hearing held pursuant to Section 358 whether the medical, dental, mental health, and educational information has been provided to the child protective agency.

CREDIT(S)

(Added by Stats.1990, c. 1370 (S.B.615), § 1. Amended by Stats.1999, c. 552 (S.B.543), § 2; Stats.2001, c. 353 (A.B.538), § 5.)

OFFICIAL FORMS

2001 Main Volume

<Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West's California Judicial Council Forms Pamphlet.>

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Former § 16010, added by Stats,1965, c. 1784, § 5, amended by Stats.1968, c. 779, p. 1520, § 1, derived from former § 1626, Stats.1937, c. 369, p. 1077, § 1626; Pol.C. § 2341, added by Stats.1925, c. 18, p. 24, § 1, amended by Stats.1927, c. 510, p. 856, § 3, relating to nontransferability of license for and change of location of institutions for child care and home-finding agencies, was repealed by Stats.1972, c. 1148, § 13, operative July 1, 1973.

CROSS REFERENCES

Department of Social Services, generally, see Welfare and Institutions Code § 10550 et seq.
Judicial Council, see California Rules of Court, Rule 10.1 et seq., and Government Code § 68500 et seq.
Juvenile court, foster care of children, see Welfare and Institutions Code § 396 et seq.
Pupils in foster care, transfer of records, see Education Code § 49069.5.

LIBRARY REFERENCES

2001 Main Volume

Social Security and Public Welfare 194.30.
Westlaw Topic No. 356A.
C.J.S. Social Security and Public Welfare § 124.

RESEARCH REFERENCES

Forms

West's California Judicial Council Forms JV-225, Your Child's Health and Education.

Treatises and Practice Aids

10 Witkin, California Summary 10th Parent and Child § 4, (S 4) Public Welfare Services.

10 Witkin, California Summary 10th Parent and Child § 9, (S 9) Rights and Responsibilities of Foster Parents.

10 Witkin, California Summary 10th Parent and Child § 521, (S 521) Termination of Jurisdiction.

10 Witkin, California Summary 10th Parent and Child § 602, Explanation and Information.

10 Witkin, California Summary 10th Parent and Child § 626, (S 626) Conduct of Hearing.

10 Witkin, California Summary 10th Parent and Child § 639, Foster Care.

10 Witkin, California Summary 10th Parent and Child § 671, (S 671) Supplemental Report.

10 Witkin, California Summary 10th Parent and Child § 682, Preliminary Assessment.

West's Ann. Cal. Welf. & Inst. Code § 16010, CA WEL & INST § 16010

Current with urgency legislation through Ch. 2 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 25 of the 2009-2010 3rd Ex.Sess., and Props. 1A to 1F on the 5/19/2009 ballot and propositions on the 6/8/2010 ballot received as of 5/1/2009

END OF DOCUMENT

(1) In the case of a school district, by resolution of the governing board entered in its minutes.

(2) In the case of a school or class maintained by a county superintendent of schools, by resolution of the county board of education entered in its minutes.

§ 422. Recording of Absence Due to Illness or Quarantine.

(a) Absence due to illness or quarantine shall, in the first instance, be recorded on attendance accounting forms and in state school registers in the same manner as any other absence is recorded.

(b) After a person authorized to make verification has determined that an absence is due to illness or quarantine, such fact shall be recorded as follows:

(1) If attendance records are kept manually and on the negative basis, the absence entry shall be circled with blue or black ink. If attendance records are kept manually and on the positive basis, an attendance entry shall be made and circled with blue or black ink. Circled entries may be recorded as attendance in the total attendance column.

(2) If attendance records are made by machine, an appropriate symbol shall be used to identify verified absences due to illness or quarantine on monthly attendance summary forms. Absences so identified may be recorded as attendance in the total attendance column.

§ 423. Prolonged Illness.

A pupil who contacts an illness of a prolonged nature or who has been a victim of an accident which will prevent attendance for a prolonged period shall be counted as absent due to illness only until such time as he is able and starts to receive instruction in home, hospital, or sanitorium, or is given instruction by other means. No absence due to illness shall be credited as attendance beyond the current school year.

§ 424. Prior Registration and Attendance Required.

Absence due to illness or quarantine shall not be credited for a pupil prior to his having been registered and in attendance upon a school or class.

Article 2. Emergency Average Daily Attendance*

§ 428. Material Decrease.

A decrease in the average daily attendance is material for the purposes of Education Code Section 46392 when at least ten percent of the students who would normally attend a school do not attend on any one day. Any decrease in attendance at a necessary small school, as defined in Education Code Section 42283 is material for the same purpose. The average daily attendance of the school during either the month of May or the month of October of the same school year, at the District's option, shall be used to determine the normal attendance of a school for purposes of this section.

NOTE: Authority cited: Sections 33112 (a) and 46392, Education Code. Reference: Section 46392, Education Code.

HISTORY

1. New Article 2 (Section 428) filed 2–24–70 as an emergency; designated effective 7–1–70 (Register 70, No. 9).
2. Certificate of Compliance filed 4–15–70 (Register 70, No. 16).
3. Amendment of section and NOTE filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).
4. New subsections (d) and (e) filed 12–6–77; effective thirtieth day thereafter (Register 77, No. 50).
5. Amendment filed 11–16–89; operative 12–16–89 (Register 89, No. 46).

*See Sections 15100–15106 for decrease in A.D.A. due to excessive ratio of pupils to classroom teachers.

§ 429. Inability to Maintain Schools for the Prescribed Minimum Fiscal Year.

NOTE: Authority cited: Sections 33112(a) and 41422, Education Code. Reference: Sections 41422 and 46392, Education Code.

HISTORY

1. New section filed 12–6–77; effective thirtieth day thereafter (Register 77, No. 50).
2. Repealer filed 11–16–89; operative 12–16–89 (Register 89, No. 46).

Article 3. Individual Pupil Records

§ 430. Definition.

(a) "Pupil" means a person who is or was enrolled in a school.

(b) "Adult Pupil" means a person who is or was enrolled in school and who is at least 18 years of age.

(c) "Eligible Pupil" means a person 16 years or older or who has completed Grade 10.

(d) "Pupil Record" means information relative to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record.

(1) "Mandatory Permanent Pupil Records" are those records which are maintained in perpetuity and which schools have been directed to compile by California statute, regulation, or authorized administrative directive.

(2) "Mandatory Interim Pupil Records" are those records which the schools are directed to compile and maintain for stipulated periods of time and are then destroyed as per California statute, regulation, or authorized administrative directive.

(3) "Permitted Pupil Records" are those records having clear importance only to the current educational process of the student.

(e) "District" means a local school district or county or state operated special school or private or out–of–state school for which California tax revenues pay all or part of the tuition.

NOTE: Authority cited for Article 3: Section 33031 and 49062, Education Code and 20 U.S.C. § 1232(g). Reference: Section 49062, Education Code.

HISTORY

1. Repealer of Article 3 (Sections 430–432) and new Article 3 (Sections 430–438) filed 9–27–76; effective thirtieth day thereafter (Register 76, No. 40).
2. Amendment of NOTE filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

§ 431. Responsibilities of Local Governing Boards.

(a) Local governing boards shall designate a certificated employee as custodian of records. Such employee shall be charged with districtwide responsibility for implementing board policies relating to pupil records.

(b) The principal of each school or a certificated designee shall be responsible for the implementation of board and district policies relating to the pupil records maintained in that school.

(c) Each district shall establish written policies and procedures for pupil records which implement Education Code Section 49060, and Title 5 regulations relating to pupil records. Such procedures and policies shall:

(1) Guarantee access to authorized persons within 5 days following the date of request;

(2) Assure security of the records; and

(3) Enumerate and describe the pupil records collected and maintained by the district.

(d) All anecdotal information and assessment reports maintained as a pupil record shall be dated and signed by the individual who originated the data.

(e) The district shall notify parents in writing at least annually of their rights in regard to pupil records as per Education Code Section 49063.

(f) When a parent's dominant language is not English, the district shall make an effort to:

(1) Provide interpretation of the pupil record in the dominant language of the parent, or

(2) Assist the parent(s) in securing an interpreter.

(g) Neither the pupil record, nor any part thereof, shall be withheld from the parent or eligible pupil requesting access.

HISTORY

1. Amendment filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

§ 432. Varieties of Pupil Records.

(a) The principal of each school shall keep on file a record of enrollment and scholarship for each pupil currently enrolled in said school.

(b) Local school districts shall not compile any other pupil records except mandatory or permitted records as herein defined:

(1) "Mandatory Permanent Pupil Records" are those records which the schools have been directed to compile by California statute authorization or authorized administrative directive. Each school district shall maintain indefinitely all mandatory permanent pupil records or an exact copy thereof for every pupil who was enrolled in a school program within said district. The mandatory permanent pupil record or a copy thereof shall be forwarded by the sending district upon request of the public or private school in which the student has enrolled or intends to enroll. Such records shall include the following:

(A) Legal name of pupil.

(B) Date of birth.

(C) Method of verification of birth date.

(D) Sex of pupil.

(E) Place of birth.

(F) Name and address of parent of minor pupil.

1. Address of minor pupil if different than the above.

2. An annual verification of the name and address of the parent and the residence of the pupil.

(G) Entering and leaving date of each school year and for any summer session or other extra session.

(H) Subjects taken during each year, half–year, summer session, or quarter.

(I) If marks or credit are given, the mark or number of credits toward graduation allows for work taken.

(J) Verification of or exemption from required immunizations.

(K) Date of high school graduation or equivalent.

(2) "Mandatory Interim Pupil Records" are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation. Such records include:

(A) A log or record identifying those persons (except authorized school personnel) or organizations requesting or receiving information from the record. The log or record shall be accessible only to the legal parent or guardian or the eligible pupil, or a dependent adult pupil, or an adult pupil, or the custodian of records.

(B) Health information, including Child Health Developmental Disabilities Prevention Program verification or waiver.

(C) Participation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge.

(D) Language training records.

(E) Progress slips and/or notices as required by Education Code Sections 49066 and 49067.

(F) Parental restrictions regarding access to directory information or related stipulations.

(G) Parent or adult pupil rejoinders to challenged records and to disciplinary action.

(H) Parental authorizations or prohibitions of pupil participation in specific programs.

(I) Results of standardized tests administered within the preceding three years.

(3) "Permitted Records" are those pupil records which districts may maintain for appropriate educational purposes. Such records may include:

(A) Objective counselor and/or teacher ratings.

(B) Standardized test results older than three years.

(C) Routine discipline data.

(D) Verified reports of relevant behavioral patterns.

(E) All disciplinary notices.

(F) Attendance records not covered in the Administrative Code Section 400.

HISTORY

1. Amendment of subsection (2)(E) filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

§ 433. Maintenance and Security of Pupil Records.

(a) The custodian of records shall be responsible for the security of pupil records maintained by the district and shall devise procedures for assuring that access to such records is limited to authorized persons.

(b) Records for each individual pupil shall be maintained in a central file at the school attended by the pupil, or when records are maintained in different locations a notation in the central file as to where such other records may be found is required.

§ 434. Access to Pupil Records.

Access to pupil records should be in accordance with Education Code Sections 49069 and 49073 through 49077.

HISTORY

1. Amendment filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

§ 435. Procedure for Access to Pupil Records.

(a) Authorized organizations, agencies, and persons from outside the school whose access requires the consent of the parent or the adult pupil must submit their request to view the records, together with any required authorization, to the chief school administrator or the custodian of records.

(b) The chief school administrator or the custodian of records or a certificated designee shall be responsible during the inspection for interpretation of the records where necessary and for prevention of their alteration, damage, or loss. In every instance of inspection of pupil records by persons who do not have assigned educational responsibility, an entry shall be made in the access log of said record, indicating the name of the person(s) granted access, the reason access was granted, the time and circumstances of inspection, and the records inspected.

(c) Unless otherwise judicially instructed, the school district shall, prior to the disclosure of any pupil records to organizations, agencies, or persons outside the school pursuant to a court order, give the parent or adult pupil at least three days' notice, if lawfully possible within the requirements of the judicial order, of the name of the requesting agency and the specific records requested. Such notification shall be provided in writing, if practicable. Only those records related to the specific purpose of the court order shall be disclosed.

§ 436. Rights of Parents and Adult Pupils.

A parent or an adult pupil may challenge the content of any pupil record according to the procedures established by Education Code Sections 49069 and 49070. A hearing panel may be convened to aid the superintendent or board in deciding whether a challenge should be sustained, as specified in Education Code Section 49071.

Information shall be corrected or removed if it is: (1) inaccurate, (2) an unsubstantiated personal conclusion or inference, (3) a conclusion or inference outside of the observer's area of competence, or (4) not based on the personal observation of a named person with the time and place of the observation noted.

HISTORY

1. Amendment filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

§ 437. Retention and Destruction of Pupil Records.

(a) No additions except routine updating shall be made to the record after high school graduation or permanent departure without the prior consent of the parent or adult pupil.

(b) Mandatory permanent pupil records shall be preserved in perpetuity by all California schools according to Chapter 2, Division 16, Part I, of this title.

(c) Unless forwarded to another district, mandatory interim pupil records may be adjudged to be disposable when the student leaves the district or when their usefulness ceases. Destruction shall be in accordance with Section 16027 of this title during the third school year following such classification.

(d) Permitted pupil records may be destroyed when their usefulness ceases. They may be destroyed after six months following the pupil's completion of or withdrawal from the educational program.

The method of destruction shall assure that records are not available to possible public inspection in the process of destruction.

§ 438. Transfer of Records.

(a) When a pupil transfers to another school district or to a private school, a copy of the pupil's Mandatory Permanent Pupil Record shall be transferred upon request from the other district or private school. The original or a copy must also be retained permanently by the sending district. If the transfer is to another California public school, the pupil's entire Mandatory Interim Pupil Record shall be forwarded. If the transfer is out of state or to a private school, the Mandatory Interim Pupil Record may be forwarded. Permitted pupil records may be forwarded. All pupil records shall be updated prior to such transfer.

(b) If the pupil is a within-California transfer, the receiving school shall notify parents of the record transfer. If the student transfers out of state, the sending district may notify the parents of the rights accorded them. The notification shall include a statement of the parent's right to review, challenge, and receive a copy of the pupil record, if desired.

(c) Pupil records shall not be withheld from the requesting district because of any charges or fees owed by the pupil or his parent. This provision applies to pupils in grades K-12 in both public and private schools.

Article 4. Records Identifying and Accounting for Project-Connected Pupils

§ 450. Records Identifying Project-Connected Pupils.

The following procedure shall be used, and the following records kept, in identifying project-connected pupils defined in Education Code Section 41931:

(a) On October 31 or on the last day of school preceding October 31, each school district contemplating the filing of an application for an apportionment under the provisions of Article 14 of Chapter 5 of Part 24 of the Education Code shall identify each pupil who has enrolled in the regular full-time day schools of the district subsequent to the commencement of any project defined in Education Code Section 41930, and whose parent or guardian has moved into the district subsequent to the commencement of such project. The record of identification shall include, but is not limited to, each of the following items of information which shall be verified by an employee of the school district:

(1) Name of pupil enrolled.
(2) Grade in which enrolled.
(3) Name of parent or guardian.
(4) Address of parent or guardian.
(5) Date parent or guardian moved into district.
(6) Name of employer of parent or guardian.
(7) Address of such employer and location of employment.
(8) Date of beginning such employment.
(9) Signature of school district employee verifying information.
(10) Dates on which re-examinations required by subsection (c) of this section were made.
(11) Date pupil enrolled in the regular full-time day schools.

(b) The pupil identified in (a) above shall include only those pupils whose parents or guardians are employed by a contractor or subcontractor in connection with the project or by the State of California whose work is in connection with the project. Upon verification of the information required in (a) above and the filing of a certification by the parent or guardian of each pupil that such parent or guardian moved into the area subsequent to the commencement of the project primarily for the purpose of securing employment or being employed in connection with the project, such pupil shall be determined to be in addition to the number of children who would otherwise normally be expected to be in the district pursuant to the provisions of Education Code Section 41931.

(c) Periodically throughout the school year, but not less than three times during such year, the district shall re-examine the employment status of the parent or guardian of each project-connected pupil. The date of any change of employment shall be indicated and the new employer noted on the identification record of the pupil.

NOTE: Authority cited: Section 41931, Education Code.

HISTORY

1. Renumbering from Article 6 (Section 450) to Article 4 (Section 450) filed 9-27-76; effective thirtieth day thereafter (Register 76, No. 40).
2. Amendment and new NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

Subchapter 3. Health and Safety of Pupils

Article 1. Fire Drills

§ 550. Fire Drills.

A fire drill shall be conducted in each elementary and intermediate school at least once each month and in each secondary school not less than twice every school year. The fire drill shall be conducted in accordance with either (a) or (b).

(a) The governing board may arrange for a fire department to conduct fire drills for the school.

(b) The principal of each school shall conduct the fire drills. In this case, all pupils, teachers, and other employees shall be required to leave the building.

NOTE: Authority cited: Section 32001, Education Code. Reference: Section 32001, Education Code.

HISTORY

1. New Chapter 3 (§§ 550, 560, 570-576, 590-593) filed 9-23-69; effective thirtieth day thereafter (Register 69, No. 39).
2. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
3. Amendment filed 11-7-79; effective thirtieth day thereafter (Register 79, No. 45).

Article 2. Civil Defense Plans and Drills

§ 560. Civil Defense and Disaster Preparedness Plans.

The governing board shall adopt a written policy for use by schools of the district in formulating individual civil defense and disaster preparedness plans.

NOTE: Authority cited: Section 33031, Education Code. Reference: None.

HISTORY

1. Amendment filed 6-28-73; effective thirtieth day thereafter (Register 73, No. 26).
2. Amendment of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
3. Amendment filed 11-7-79; effective thirtieth day thereafter (Register 79, No. 45).

Article 3. School Safety Patrols (Traffic Safety)

§ 570. Establishment and Supervision.

A school safety patrol established by a governing board pursuant to Education Code Section 49300, shall comply with this article, as well as Article 4 (commencing with Section 49300) of Chapter 1 of Part 19 of the Education Code.

NOTE: Authority cited for Article 3: Sections 49300 and 49303, Education Code.

HISTORY

1. Amendment of Section and NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

mitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 2.5. Retention and Destruction of Records

Article 1. General Provisions

§ 59020. Definition of Records.

(a) For purposes of this subchapter, "records" means all records, maps, books, papers, data processing output, and electronic documents that a Community College district is required by law to prepare or retain by law or official duty. "Records" includes "student records" as defined in section 76210 of the Education Code.

(b) The following documents are not "records" and may be destroyed at any time:

(1) Additional copies of documents beyond the original or one copy. (A person receiving a duplicated copy need not retain it.)

(2) Correspondence between district employees that does not pertain to personnel matters or constitute a student record.

(3) Advertisements and other sales material received.

(4) Textbooks used for instruction, and other instructional materials, including library books, pamphlets and magazines.

NOTE: Authority cited: Sections 66700, 70901 and 76220, Education Code. Reference: Sections 76210 and 76220, Education Code.

HISTORY

1. New chapter 2.5 (sections 59020–59029) filed 10–8–76; effective thirtieth day thereafter (Register 76, No. 41).
2. Amendment of section and NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of HISTORY 4 (Register 95, No. 29).
6. Amendment of section and NOTE filed 10–10–2001; operative 11–9–2001. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2001, No. 41).
7. Change without regulatory effect amending subsection (a) filed 3–15–2006 pursuant to section 100, title 1, California Code of Regulations. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2006, No. 17).

§ 59021. Scope of Chapter.

The provisions of this chapter apply only in the event that the destruction or retention of records by the district is not otherwise authorized or provided for by law.

NOTE: Authority cited: Sections 66700, 70901 and 76220, Education Code. Reference: Section 76220, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59022. Classification of Records.

(a) The governing board of each Community College district shall establish an annual procedure by which the chief executive officer, or other designee shall review documents and papers received or produced during the prior academic year and classify them as Class 1–Permanent, Class 2–Optional, or Class 3–Disposable.

(b) All records not classified prior to July 1, 1976, are subject to the same review and classification as in (a). If such records are three or more years old and classified as Class 3–Disposable, they may be destroyed without further delay, but in accordance with article 3.

(c) Records originating during a current academic year shall not be classified during that year.

(d) Records of a continuing nature, i.e., active and useful for administrative, legal, fiscal, or other purposes over a period of years, shall not be classified until such usefulness has ceased.

(e) Whenever an original Class 1–Permanent record is photographed, microphotographed, or otherwise reproduced on film or electronically, the copy thus made is hereby classified as Class 1–Permanent. The original record, unless classified as Class 2–Optional, may be classified as Class 3–Disposable, and may then be destroyed in accordance with this chapter if the following conditions have been met:

(1) The reproduction was accurate in detail.

(2) The chief executive officer, or other designee, has attached to or incorporated in the copy or system a signed and dated certification of compliance with the provisions of section 1531 of the Evidence Code, stating in substance that the copy is a correct copy of the original, or a specified part thereof, as the case may be.

(3) The copy was placed in an accessible location and provision was made for preserving permanently, examining and using same.

(4) In addition, if the record is photographed or microfilmed, the reproduction must be on film of a type approved for permanent, photographic records by the United States Bureau of Standards.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66700 and 70901, Education Code; and Section 1531, Evidence Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 29).
4. Amendment of subsections (e)–(e)(3), new subsection (e)(4) and amendment of NOTE filed 10–10–2001; operative 11–9–2001. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2001, No. 41).

Article 2. Period of Retention

§ 59023. Class 1–Permanent Records.

The original of each of the records listed in this Section, or one exact copy thereof when the original is required by law to be filed with another agency, is a Class 1–Permanent record and shall be retained indefinitely, unless copied or reproduced in accordance with Subsection (e) of Section 59022.

(a) The following annual reports:

(1) official budget;

(2) financial report of all funds, including cafeteria and student body funds;

(3) audit of all funds;

(4) full–time equivalent student, including Period 1 and Period 2 reports; and

(5) other major annual reports, including:

(A) those containing information relating to property, activities, financial condition, or transactions; and

(B) those declared by board minutes to be permanent.

(b) The following official actions:

(1) minutes of the board or committees thereof, including the text of a rule, regulation, policy, or resolution not set forth verbatim in minutes but included therein by reference only;

(2) elections, including the call, if any, for and the result (but not including detail documents, such as ballots) of an election called, conducted or canvassed by the governing board for a board member, the board member's recall, issuance of bonds, incurring any long–term liability, change in maximum tax rates, reorganization, or any other purpose; and

(3) records transmitted by another agency that pertain to that agency's action with respect to district reorganization.

(c) The following personnel records of employees. All detail records relating to employment, assignment, employee evaluations, amounts and dates of service rendered, termination or dismissal of an employee in any position, sick leave record, rate of compensation, salaries or wages paid, deductions or withholdings made and the person or agency to whom such amounts were paid. In lieu of the detail records, a complete proven summary payroll record for every employee of the school district containing the same data may be classified as Class 1–Permanent, and the detail records may then be classified as Class 3–Disposable.

(d) The following student records:

(1) the records of enrollment and scholarship for each student. Such records of enrollment and scholarship may include but need not be limited to:

(A) name of student;

(B) date of birth;

(C) place of birth;

(D) name and address of a parent having custody or a guardian, if the student is a minor;

(E) entering and leaving date for each academic year and for any summer session or other extra session;

(F) subjects taken during each year, half year, summer session or quarter; and

(G) if grades or credits are given, the grades and number of credits toward graduation allowed for work taken.

(2) All records pertaining to any accident or injury involving a student for which a claim for damages has been filed as required by law, including any policy of liability insurance relating thereto, except that these records cease to be Class 1–Permanent records, one year after the claim has been settled or after the applicable statute of limitations has run.

(e) Property Records. All detail records relating to land, buildings, and equipment. In lieu of such detail records, a complete property ledger may be classified as Class 1–Permanent, and the detail records may then be classified as Class 3–Disposable, if the property ledger includes:

(1) all fixed assets;

(2) an equipment inventory; and

(3) for each unit of property, the date of acquisition or augmentation, the person from whom acquired, an adequate description or identification, and the amount paid, and comparable data if the unit is disposed of by sale, loss, or otherwise.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).
5. Amendment of first paragraph filed 10–10–2001; operative 11–9–2001. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 2001, No. 41).

§ 59024. Class 2–Optional Records.

Any record worthy of further preservation but not classified as Class 1–Permanent may be classified as Class 2–Optional and shall then be retained until reclassified as Class 3–Disposable. If the chief executive officer, or other designee, determines that classification should not be made by the time specified in section 59022, all records of the prior year may be classified as Class 2–Optional, pending further review and classification within one year.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59025. Class 3–Disposable Records.

All records, other than Continuing Records, not classified as Class 1–Permanent or Class 2–Optional, shall be classified as Class 3–Disposable, including, but not limited to, detail records relating to:

(a) records basic to audit, including those relating to attendance, full–time equivalent student, or a business or financial transaction (purchase orders, invoices, warrants, ledger sheets, canceled checks and stubs, student body and cafeteria fund records, etc.), and detail records used in the preparation of any other report; and

(b) periodic reports, such as daily, weekly, and monthly reports, bulletins, and instructions.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsections (a)–(b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59026. Retention Period.

(a) Generally, a Class 3–Disposable record, unless otherwise specified in this Subchapter, should be destroyed during the third college year after the college year in which it originated (e.g., 1993–94 plus 3 = 1996–97). Federal programs, including various student aid programs, may require longer retention periods and such program requirements shall take precedence over the requirements contained herein.

(b) With respect to records basic to an audit, a Class 3–Disposable record shall not be destroyed until after the third July 1 succeeding the completion of the audit required by Education Code Section 84040 or of any other legally required audit, or that period specified by Section 59118, or after the ending date of any retention period required by any agency other than the State of California, whichever date is later.

(c) With respect to continuing records, a continuing record shall not be destroyed until the third year after it has been classified as Class 3–Disposable.

NOTE: Authority cited: Sections 66700, 70901, 71020.5 and 84500, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of subsection (b) filed 3–7–85; effective thirtieth day thereafter (Register 85, No. 10).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
5. Editorial correction of printing error in subsection (a) (Register 91, No. 43).
6. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
7. Amendment of subsection (a) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
8. Editorial correction of HISTORY 4 (Register 95, No. 29).

Article 3. Procedures for Destruction

§ 59027. Chief Administrative Officer Actions.

(a) The chief administrative officer, or the designee of that officer, shall:

(1) Personally supervise the classification of records.

(2) Mark each file or other container as to classification and the school year in which the records originated. If the records are classified as Class

3–Disposable, the chief administrative officer shall also mark the school year in which such records are to be destroyed.

(3) Supervise the destruction of records.

(b) The chief administrative officer or designee shall submit to the governing board a list of records recommended for destruction, and shall certify that no records are included in the list in conflict with these regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59028. Board Action.

The governing board shall:

(a) Approve or disapprove the recommendation of its designee.

(b) Order a reclassification when necessary or desirable.

(c) Order by action recorded in the minutes (with lists attached) the destruction of records in accordance with these regulations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59029. Manner of Destruction.

Upon the order of the governing board that specified records shall be destroyed, such records shall be permanently destroyed by such foolproof methods as shredding, burning, or pulping; and such destruction shall be supervised by the chief executive officer or other designee.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59030. Certification as to Content of Records Destroyed by Calamity.

Whenever in any college year the community college register of any instructor, or other records of any district are destroyed by conflagration or public calamity, preventing the instructor and college officers from making their annual reports in the usual manner and with accuracy, affidavits of the instructor, the president, or other officers of the district, certifying as to the contents of the destroyed register or other records, shall be accepted by all college authorities for all purposes pertaining to the district, except that of calculations of full–time equivalent students (FTES).

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of printing error (Register 91, No. 43).
3. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
5. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59031. Full–time Equivalent Student Records Where Area Hit by Calamity.

Whenever the full–time equivalent student of a community college district has been materially affected in any college year by conflagration, public calamity, or epidemic of unusual duration and prevalence, the regular annual reports of the instructor, the president, or officers of the district, shall be accepted by all college officers for all matters pertaining to the district, except that of full–time equivalent student.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of section and NOTE filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59033. Attendance Accounting For Lost or Destroyed Records.

Whenever any attendance records have been lost or destroyed by conflagration or public calamity, attendance accounting related to such records shall be made in accordance with section 58031.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
2. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).

§ 59040. College Year.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59041. Academic Year.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Repealer filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 3. Audits and Reviews

§ 59100. General Authority of the Chancellor.

To provide comprehensive accountability in programs where the Chancellor's Office has regulatory or supervisory responsibility, the Chancellor is authorized as needed to have audits or reviews conducted or to investigate any audit or review citing which indicates that the allocation of state moneys or applicable federal funding may have been in error, and where necessary, to require action to resolve any substantial error as provided herein.

NOTE: Authority cited: Sections 66700, 70901, 71020.5, 84040 and 84500, Education Code. Reference: Sections 71020.5, 84040, 84040.5 and 84040.6, Education Code.

HISTORY

1. New section filed 10–25–91; operative 11–24–91 (Register 92, No. 9). For prior history, see Register 82, No. 31.

§ 59102. Contracting For Annual Audits.

Arrangements for annual audits for any fiscal year as required by Section 84040 of the Education Code shall be made final no later than the May 1 preceding that fiscal year.

from conditions described in Education Code Section 11653, such a decrease is material for purposes of that section as follows:

(a) Attendance at a necessary small school as defined in Education Code Section 17655—any decrease.

(b) Attendance at a necessary small high school as defined in Education Code Section 17663—any decrease.

(c) In any other case, when the period of emergency and the average decrease of potential days of attendance of a school in the district are as shown in the following table:

Period of emergency	*Average decrease of at least*
1 day	35%
2 consecutive days	17.5%
3 consecutive days	11.67%
4 consecutive days	8.75%
5 or more consecutive days	7%

NOTE: Authority cited for Article 2: Section 11053, Education Code. Issuing agency: Superintendent of Public Instruction.

History: 1. New Article 2 (§ 428) filed 2-24-70 as an emergency; designated effective 7-1-70 (Register 70, No. 9).

Article 3. Enrollment and Scholarship Records

430. Keeping of Record. The principal of each school shall keep on file a record of enrollment and scholarship for each pupil currently enrolled in his school.

History: 1. New Chapter 2 (§§430–432, 435–438, 440, 441, 450) filed 9-23-69; effective thirtieth day thereafter (Register 69, No. 39).

431. Contents of Record. The record shall include all of the following:

(a) Name of pupil.

(b) Date of birth, if the pupil is a minor.

(c) Method of verification of date of birth of pupil being admitted to kindergarten or first grade.

(d) Place of birth.

(e) Name and address of a parent having custody or a guardian, if the pupil is a minor.

(f) Entering and leaving date for each school year and for any summer session or other extra session.

(g) Subjects taken during each year, half year, summer session or quarter of his course.

(h) If marks or credits are given, the marks and number of credits toward graduation allowed for work taken.

432. Retention. The enrollment and scholarship record shall be retained, subject to any authorization contained elsewhere in this title that permits:

(a) Transfer

(b) Destruction by a specified procedure after a stated period of retention.

UNITED STATES PUBLIC LAWS
101st Congress - Second Session
Convening January 23, 1990

Additions and Deletions are not identified in this document.
For Legislative History of Act, see LH database or Report for
this Public Law in U.S.C.C. & A.N. Legislative History section.

PL 101-542 (S 580)
November 8, 1990
STUDENT RIGHT-TO-KNOW AND CAMPUS SECURITY ACT

AN ACT to require institutions of higher education receiving Federal financial assistance to provide certain information with respect to the graduation rates of student-athletes at such institutions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

<< 20 USCA § 1001 NOTE >>

SECTION 1. SHORT TITLE.

This Act may be cited as the "Student Right-To-Know and Campus Security Act".

TITLE I--STUDENT RIGHT-TO-KNOW

<< 20 USCA § 1001 NOTE >>

SEC. 101. SHORT TITLE.

This title may be cited as the "Student Right-To-Know Act".

<< 20 USCA § 1092 NOTE >>

SEC. 102. FINDINGS.

The Congress finds that--

(1) education is fundamental to the development of individual citizens and the progress of the Nation as a whole;

(2) there is increasing concern among citizens, educators, and public officials regarding the academic performance

of students at institutions of higher education;

(3) a recent study by the National Institute of Independent Colleges and Universities found that just 43 percent of students attending 4-year public colleges and universities and 54 percent of students entering private institutions graduated within 6 years of enrolling;

(4) the academic performance of student athletes, especially student athletes receiving football and basketball scholarships, has been a source of great concern in recent years;

(5) more than 10,000 athletic scholarships are provided annually by institutions of higher education;

(6) prospective students and prospective student athletes should be aware of the educational commitments of an institution of higher education; and

(7) knowledge of graduation rates would help prospective students and prospective student athletes make an informed judgment about the educational benefits available at a given institution of higher education.

SEC. 103. ADDITIONAL GENERAL DISCLOSURE REQUIREMENTS RELATING TO COMPLETION OR GRADUATION.

<< 20 USCA § 1092 >>

(a) DISCLOSURE OF COMPLETION OR GRADUATION RATES.--Section 485(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(a)(1) (in this Act referred to as the "Act") is amended--

(1) by striking "and" at the end of subparagraph (J);

(2) by striking the period at the end of subparagraph (K) and inserting "; and"; and

*2382 (3) by adding at the end thereof the following new subparagraph:

"(L) the completion or graduation rate of certificate- or degree-seeking, full-time students entering such institutions.".

(b) CONSTRUCTION OF DISCLOSURE REQUIREMENTS.--Section 485(a) of such Act (42 U.S.C. 1092(a)) is further amended by inserting after paragraph (2) the following new paragraph:

"(3) In calculating the completion or graduation rate under subparagraph (L) of paragraph (1) of this subsection or under subsection (e), a student shall be counted as a completion or graduation if, within 150 percent of the normal time for completion of or graduation from the program, the student has completed or graduated from the program, or enrolled in any program of an eligible institution for which the prior program provides substantial preparation. The information required to be disclosed under such subparagraph--

"(A) shall be available beginning on July 1, 1993, and each year thereafter to current and prospective students prior to enrolling or entering into any financial obligation;

"(B) shall cover the one-year period ending on June 30 of the preceding year; and

"(C) shall be updated not less than biennially.

"(4) For purposes of this section, institutions may exclude from the information disclosed in accordance with subparagraph (L) of paragraph (1) the completion or graduation rates of students who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government.".

(c) ANALYSIS OF POTENTIAL INSTITUTIONAL OUTCOMES.--(1) In conjunction with representatives of institutions of higher education, the Secretary shall analyze the feasibility and desirability of making available to students and potential students--

(A) the completion or graduation rate of individuals at an institution broken down by program or field of study;

(B) the completion or graduation rate of an institution reported by individual schools or academic divisions within the institution;

(C) the rate at which individuals who complete or graduate from the program of an institution pass applicable licensure or certification examinations required for employment in a particular vocation, trade, or professional field;

(D) the rate at which individuals who complete or graduate from an occupationally specific program and who enter the labor market following completion of or graduation from such a program obtain employment in the occupation for which they are trained; and

(E) other institutional outcomes that may be appropriate.

(2) In calculating the completion or graduation rate under paragraph (1), a student shall be counted as a completion or graduation if, within 150 percent of the normal time for completion of or graduation from the program, the student has completed or graduated from the program, or enrolled in any program of an eligible institution for which the prior program provides substantial preparation.

(d) REPORT.--The Secretary shall submit a report to the appropriate committees of Congress before August 1, 1991 on the analysis conducted pursuant to subsection (c).

*2383 SEC. 104. REPORTING REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION.

<< 20 USCA § 1092 >>

(a) AMENDMENT.--Section 485 of the Act (20 U.S.C. 1092) (as amended by section 103) is further amended by adding at the end thereof the following new subsection:

"(e) DISCLOSURES REQUIRED WITH RESPECT TO ATHLETICALLY RELATED STUDENT AID.-- (1) Each institution of higher education which participates in any program under this title and is attended by students receiving athletically related student aid shall annually submit a report to the Secretary which contains--

"(A) the number of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track, and all other sports combined;

"(B) the number of students at the institution of higher education, broken down by race and sex;

"(C) the completion or graduation rate for students at the institution of higher education who received athletically

related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track and all other sports combined;

"(D) the completion or graduation rate for students at the institution of higher education, broken down by race and sex;

"(E) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following categories: basketball, football, baseball, cross country/track, and all other sports combined; and

"(F) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education broken down by race and sex.

"(2) When an institution described in paragraph (1) of this subsection offers a potential student athlete athletically related student aid, such institution shall provide to the student and his parents, his guidance counselor, and coach the information contained in the report submitted by such institution pursuant to paragraph (1).

"(3) For purposes of this subsection, institutions may exclude from the reporting requirements under paragraphs (1) and (2) the completion or graduation rates of students and student athletes who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government.

"(4) Each institution of higher education described in paragraph (1) may provide supplemental information to students and the Secretary showing the completion or graduation rate when such completion or graduation rate includes students transferring into and out of such institution.

"(5) The Secretary, using the reports submitted under this subsection, shall compile and publish a report containing the information required under paragraph (1) broken down by--

"(A) individual institutions of higher education; and

"(B) athletic conferences recognized by the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics.

*2384 "(6) The Secretary shall waive the requirements of this subsection for any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection.

"(7) The Secretary, in conjunction with the National Junior College Athletic Association, shall develop and obtain data on completion or graduation rates from two-year colleges that award athletically related student aid. Such data shall, to the extent practicable, be consistent with the reporting requirements set forth in this section.

"(8) For purposes of this subsection, the term 'athletically related student aid' means any scholarship, grant, or other form of financial assistance the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution of higher education in order to be eligible to receive such assistance.".

<< 20 USCA § 1092 NOTE >>

(b) EFFECTIVE DATE.--The amendments made by this section shall take effect July 1, 1992, except that the first

report to the Secretary of Education shall be due on July 1, 1993.

SEC. 105. ANALYSIS OF ATHLETIC ACTIVITY REVENUES.

(a) IN GENERAL.--The Secretary, in conjunction with institutions of higher education and collegiate athletic associations, shall analyze the feasibility of and make recommendations regarding a requirement that institutions of higher education compile and report on the revenues derived and expenditures made (per sport) by such institutions' athletic department and intercollegiate athletic activities.

(b) REPORTS.--The Secretary shall prepare a report on the activities described in subsection (a) and transmit such report to the appropriate committees of Congress before April 1, 1991.

TITLE II--CRIME AWARENESS AND CAMPUS SECURITY

<< 20 USCA § 1001 NOTE >>

SEC. 201. SHORT TITLE.

This title may be cited as the "Crime Awareness and Campus Security Act of 1990".

<< 20 USCA § 1092 NOTE >>

SEC. 202. FINDINGS.

The Congress finds that--

(1) the reported incidence of crime, particularly violent crime, on some college campuses has steadily risen in recent years;

(2) although annual "National Campus Violence Surveys" indicate that roughly 80 percent of campus crimes are committed by a student upon another student and that approximately 95 percent of the campus crimes that are violent are alcohol- or drug-related, there are currently no comprehensive data on campus crimes;

(3) out of 8,000 postsecondary institutions participating in Federal student aid programs, only 352 colleges and universities voluntarily provide crime statistics directly through the Uniform Crime Report of the Federal Bureau of Investigation, and other institutions report data indirectly, through local police *2385 agencies or States, in a manner that does not permit campus statistics to be separated;

(4) several State legislatures have adopted or are considering legislation to require reporting of campus crime statistics and dissemination of security practices and procedures, but the bills are not uniform in their requirements and standards;

(5) students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or to report occurrences of crime;

(6) applicants for enrollment at a college or university, and their parents, should have access to information about the crime statistics of that institution and its security policies and procedures; and

(7) while many institutions have established crime preventive measures to increase the safety of campuses, there is

a clear need--

(A) to encourage the development on all campuses of security policies and procedures;

(B) for uniformity and consistency in the reporting of crimes on campus; and

(C) to encourage the development of policies and procedures to address sexual assaults and racial violence on college campuses.

<< 20 USCA § 1232 >>

SEC. 203. DISCLOSURE OF DISCIPLINARY PROCEEDING OUTCOMES TO CRIME VICTIMS.

Section 438(b) of the General Education Provisions Act (20 U.S.C. 1232g(b)) is amended by adding at the end thereof the following new paragraph:

"(6) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), the results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime with respect to such crime.".

SEC. 204. DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME STATISTICS.

<< 20 USCA § 1092 >>

(a) DISCLOSURE REQUIREMENTS.--Section 485 of the Act (20 U.S.C. 1092) (as amended by sections 103 and 104) is further amended by adding at the end thereof the following new subsection:

"(f) DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME STATISTICS.--(1) Each eligible institution participating in any program under this title shall on September 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

"(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

*2386 "(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

"(C) A statement of current policies concerning campus law enforcement, including--

"(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and

"(ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropri-

ate police agencies.

"(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

"(E) A description of programs designed to inform students and employees about the prevention of crimes.

"(F) Statistics concerning the occurrence on campus, during the most recent school year, and during the 2 preceding school years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies--

"(i) murder;

"(ii) rape;

"(iii) robbery;

"(iv) aggravated assault;

"(v) burglary; and

"(vi) motor vehicle theft.

"(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

"(H) Statistics concerning the number of arrests for the following crimes occurring on campus:

"(i) liquor law violations;

"(ii) drug abuse violations; and

"(iii) weapons possessions.

"(I) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 1213 of this Act.

"(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

"(3) Each institution participating in any program under this title shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and *2387 employees in a manner that is timely and that will aid in the prevention of similar occurrences.

"(4) Upon the request of the Secretary, each institution participating in any program under this title shall submit to the Secretary a copy of the statistics required to be made available under paragraphs (1)(F) and (1)(H). The Secretary shall--

"(A) review such statistics and report to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate on campus crime statistics by September 1, 1995; and

"(B) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

"(5)(A) For purposes of this subsection, the term 'campus' includes--

"(i) any building or property owned or controlled by the institution of higher education within the same reasonably contiguous geographic area and used by the institution in direct support of, or related to its educational purposes; or

"(ii) any building or property owned or controlled by student organizations recognized by the institution.

"(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

"(6) The statistics described in paragraphs (1)(F) and (1)(H) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act.".

<< 20 USCA § 1092 NOTE >>

(c) EFFECTIVE DATES.--The amendments made by this section shall take effect on September 1, 1991, except that the requirement of section 485(f)(1)(F) and (H) of the Higher Education Act of 1965 (as added by this section) shall be applied to require statistics with respect to school years preceding the date of enactment of this Act only to the extent that data concerning such years is reasonably available.

<< 20 USCA § 1094 >>

SEC. 205. PROGRAM PARTICIPATION AGREEMENT REQUIREMENTS.

Section 487(a) of the Act (20 U.S.C. 1094(a)) is amended by adding at the end thereof the following new paragraph:

"(12) The institution certifies that--

"(A) the institution has established a campus security policy; and

"(B) the institution has complied with the disclosure requirements of section 485(f).".

TITLE III--CALCULATION OF DEFAULT RATES

<< 20 USCA § 1085 >>

SEC. 301. CALCULATION OF DEFAULT RATES.

Section 435 of the Act (20 U.S.C. 1085) is amended--

*2388 (1) in subsection (1), by striking out "The term" and inserting in lieu thereof "Except as provided in subsection (m), the term"; and

(2) in subsection (m), by inserting immediately after the first sentence the following: "In determining the number of students who default before the end of such fiscal year, the Secretary shall include only loans for which the Secretary or a guaranty agency has paid claims for insurance, and, in calculating the cohort default rate, exclude any loans which, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.".

TITLE IV--CONFORMING REGULATIONS

SEC. 401. CONFORMING REGULATIONS.

<< 20 USCA § 1092 NOTE >>

(a) IN GENERAL.--The Secretary is authorized to issue regulations to carry out the provisions of this Act.

(b) SUSPENSION.--Subparagraphs (c) through (f) of section 668.44 of title 34, Code of Federal Regulations, are suspended.

Approved November 8, 1990

PL 101-542, 1990 S 580

END OF DOCUMENT

Effective: August 14, 2008

United States Code Annotated Currentness
Title 20. Education
Chapter 28. Higher Education Resources and Student Assistance (Refs & Annos)
Subchapter IV. Student Assistance (Refs & Annos)
Part F. General Provisions Relating to Student Assistance Programs (Refs & Annos)

§ 1092. Institutional and financial assistance information for students

(a) Information dissemination activities

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall carry out information dissemination activities for prospective and enrolled students (including those attending or planning to attend less than full time) regarding the institution and all financial assistance under this subchapter and part C of subchapter I of chapter 34 of Title 42. The information required by this section shall be produced and be made readily available upon request, through appropriate publications, mailings, and electronic media, to an enrolled student and to any prospective student. Each eligible institution shall, on an annual basis, provide to all enrolled students a list of the information that is required to be provided by institutions to students by this section and section 1232g of this title, together with a statement of the procedures required to obtain such information. The information required by this section shall accurately describe--

(A) the student financial assistance programs available to students who enroll at such institution;

(B) the methods by which such assistance is distributed among student recipients who enroll at such institu- tion;

(C) any means, including forms, by which application for student financial assistance is made and requirements for accurately preparing such application;

(D) the rights and responsibilities of students receiving financial assistance under this subchapter and part C of subchapter I of chapter 34 of Title 42;

(E) the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;

(F) a statement of--

(i) the requirements of any refund policy with which the institution is required to comply;

(ii) the requirements under section 1091b of this title for the return of grant or loan assistance provided under this subchapter and part C of subchapter I of chapter 34 of Title 42; and

(iii) the requirements for officially withdrawing from the institution;

(G) the academic program of the institution, including (i) the current degree programs and other educational and training programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic program, (iii) the faculty and other instructional personnel, and (iv) any plans by the institution for improving the academic program of the institution;

(H) each person designated under subsection (c) of this section, and the methods by which and locations in which any person so designated may be contacted by students and prospective students who are seeking information required by this subsection;

(I) special facilities and services available to handicapped students;

(J) the names of associations, agencies, or governmental bodies which accredit, approve, or license the institution and its programs, and the procedures under which any current or prospective student may obtain or review upon request a copy of the documents describing the institution's accreditation, approval, or licensing;

(K) the standards which the student must maintain in order to be considered to be making satisfactory progress, pursuant to section 1091(a)(2) of this title;

(L) the completion or graduation rate of certificate- or degree-seeking, full-time, undergraduate students entering such institutions;

(M) the terms and conditions of the loans that students receive under parts B, C, and D of this subchapter;

(N) that enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment in the home institution for purposes of applying for Federal student financial assistance;

(O) the campus crime report prepared by the institution pursuant to subsection (f), including all required reporting categories;

(P) institutional policies and sanctions related to copyright infringement, including--

(i) an annual disclosure that explicitly informs students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) a summary of the penalties for violation of Federal copyright laws; and

(iii) a description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution's information technology system;

(Q) student body diversity at the institution, including information on the percentage of enrolled, full-time students who--

(i) are male;

(ii) are female;

(iii) receive a Federal Pell Grant; and

(iv) are a self-identified member of a major racial or ethnic group;

(R) the placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources;

(S) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources;

(T) the fire safety report prepared by the institution pursuant to subsection (i);

(U) the retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering such institution; and

(V) institutional policies regarding vaccinations.

(2) For the purpose of this section, the term "prospective student" means any individual who has contacted an eligible institution requesting information concerning admission to that institution.

(3) In calculating the completion or graduation rate under subparagraph (L) of paragraph (1) of this subsection or under subsection (e) of this section, a student shall be counted as a completion or graduation if, within 150 percent of the normal time for completion of or graduation from the program, the student has completed or graduated from the program, or enrolled in any program of an eligible institution for which the prior program provides substantial preparation. The information required to be disclosed under such subparagraph--

(A) shall be made available by July 1 each year to enrolled students and prospective students prior to the students enrolling or entering into any financial obligation; and

(B) shall cover the one-year period ending on August 31 of the preceding year.

(4) For purposes of this section, institutions may--

(A) exclude from the information disclosed in accordance with subparagraph (L) of paragraph (1) the completion or graduation rates of students who leave school to serve in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government; or

(B) in cases where the students described in subparagraph (a) represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, recalculate the completion or graduation rates of such students by excluding from the calculation described in paragraph (3) the time period such students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(5) The Secretary shall permit any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection, to use such data to satisfy the requirements of this subsection.

(6) Each institution may provide supplemental information to enrolled and prospective students showing the completion or graduation rate for students described in paragraph (4) or for students transferring into the institution or information showing the rate at which students transfer out of the institution.

(7)(A)(i) Subject to clause (ii), the information disseminated under paragraph (1)(L), or reported under subsection (e), shall be disaggregated by gender, by each major racial and ethnic subgroup, by recipients of a Federal Pell Grant, by recipients of a loan made under part B or C of this subchapter (other than a loan made under section 1078-8 of this title or a Federal Direct Unsubsidized Stafford Loan) who did not receive a Federal Pell Grant, and by recipients of neither a Federal Pell Grant nor a loan made under part B or C of this subchapter (other than a loan made under section 1078-8 of this title or a Federal Direct Unsubsidized Stafford Loan), if the number of students in such subgroup or with such status is sufficient to yield statistically reliable information and reporting will not reveal personally identifiable information about an individual student. If such number is not sufficient for such purposes, then the institution shall note that the institution enrolled too few of such students to so disclose or report with confidence and confidentiality.

(ii) The requirements of clause (i) shall not apply to two-year, degree-granting institutions of higher education until academic year 2011-2012.

(B)(i) In order to assist two-year degree-granting institutions of higher education in meeting the requirements of paragraph (1)(L) and subsection (e), the Secretary, in consultation with the Commissioner for Education Statistics, shall, not later than 90 days after August 14, 2008, convene a group of representatives from diverse institutions of higher education, experts in the field of higher education policy, state higher education officials, students, and other stakeholders in the higher education community, to develop recommendations regarding the accurate calculation and reporting of the information required to be disseminated or reported under paragraph (1)(L) and subsection (e) by two-year, degree-granting institutions of higher education. In developing such recommendations, the group of representatives shall consider the mission and role of two-year degree-granting institutions of higher education, and may recommend additional or alternative measures of student success for such institutions in light of the mission and role of such institutions.

(ii) The Secretary shall widely disseminate the recommendations required under this subparagraph to two-year, degree-granting institutions of higher education, the public, and the authorizing committees not later than 18 months after the first meeting of the group of representatives convened under clause (i).

(iii) The Secretary shall use the recommendations from the group of representatives convened under clause (i) to provide technical assistance to two-year, degree-granting institutions of higher education in meeting the requirements of paragraph (1)(L) and subsection (e).

(iv) The Secretary may modify the information required to be disseminated or reported under paragraph (1)(L) or subsection (e) by a two-year, degree-granting institution of higher--

(I) based on the recommendations received under this subparagraph from the group of representatives convened under clause (i);

(II) to include additional or alternative measures of student success if the goals of the provisions of paragraph (1)(L) and subsection (e) can be met through additional means or comparable alternatives; and

(III) during the period beginning on August 14, 2008, and ending on June 30, 2011.

(b) Exit counseling for borrowers

(1)(A) Each eligible institution shall, through financial aid offices or otherwise, provide counseling to borrowers of loans that are made, insured, or guaranteed under part B of this subchapter (other than loans made pursuant to section 1078-3 of this title or loans under section 1078-2 of this title made on behalf of a student) or made under part C of this subchapter (other than Federal Direct Consolidation Loans or Federal Direct PLUS Loans made on behalf of a student) or made under part D of this subchapter prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution. The counseling required by this subsection shall include--

(i) information on the repayment plans available, including a description of the different features of each plan and sample information showing the average anticipated monthly payments, and the difference in interest paid and total payments, under each plan;

(ii) debt management strategies that are designed to facilitate the repayment of such indebtedness;

(iii) an explanation that the borrower has the options to prepay each loan, pay each loan on a shorter schedule, and change repayment plans;

(iv) for any loan forgiveness or cancellation provision of this subchapter and part C of subchapter I of chapter 34 of Title 42, a general description of the terms and conditions under which the borrower may obtain full or partial forgiveness or cancellation of the principal and interest, and a copy of the information provided by the Secretary under section 1092(d) of this title;

(v) for any forbearance provision of this this subchapter and part C of subchapter I of chapter 34 of Title 42, a general description of the terms and conditions under which the borrower may defer repayment of principal or interest or be granted forbearance, and a copy of the information provided by the Secretary under section 1092(d) of this title;

(vi) the consequences of defaulting on a loan, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(vii) information on the effects of using a consolidation loan under section 1078-3 of this title or a Federal Direct Consolidation Loan to discharge the borrower's loans under parts B, C, and D of this subchapter, including at a minimum--

(I) the effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(II) the effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(III) the option of the borrower to prepay the loan or to change repayment plans; and

(IV) that borrower benefit programs may vary among different lenders;

(viii) a general description of the types of tax benefits that may be available to borrowers; and

(ix) a notice to borrowers about the availability of the National Student Loan Data System and how the system can be used by a borrower to obtain information on the status of the borrower's loans; and

(B) In the case of borrower who leaves an institution without the prior knowledge of the institution, the institution shall attempt to provide the information described in subparagraph (A) to the student in writing.

(2)(A) Each eligible institution shall require that the borrower of a loan made under part B, C, or D of this subchapter submit to the institution, during the exit interview required by this subsection--

(i) the borrower's expected permanent address after leaving the institution (regardless of the reason for leav- ing);

(ii) the name and address of the borrower's expected employer after leaving the institution;

(iii) the address of the borrower's next of kin; and

(iv) any corrections in the institution's records relating the borrower's name, address, social security number, references, and driver's license number.

(B) The institution shall, within 60 days after the interview, forward any corrected or completed information received from the borrower to the guaranty agency indicated on the borrower's student aid records.

(C) Nothing in this subsection shall be construed to prohibit an institution of higher education from utilizing electronic means to provide personalized exit counseling.

(c) Financial assistance information personnel

Each eligible institution shall designate an employee or group of employees who shall be available on a full-time basis to assist students or potential students in obtaining information as specified in subsection (a) of this section. The Secretary may, by regulation, waive the requirement that an employee or employees be available on a full-time basis for carrying out responsibilities required under this section whenever an institution in which the total enrollment, or the portion of the enrollment participating in programs under this subchapter and part C of subchapter I of chapter 34 of Title 42 at that institution, is too small to necessitate such employee or employees being available on a full-time basis. No such waiver may include permission to exempt any such institution from designating a specific individual or a group of individuals to carry out the provisions of this section.

(d) Departmental publication of descriptions of assistance programs

(1) The Secretary shall make available to eligible institutions, eligible lenders, and secondary schools descriptions of Federal student assistance programs including the rights and responsibilities of student and institutional participants, in order to (A) assist students in gaining information through institutional sources, and (B) assist institutions in carrying out the provisions of this section, so that individual and institutional participants will be fully aware of their rights and responsibilities under such programs. In particular, such information shall include information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations that will be incurred as a result of receiving loans of varying amounts under this subchapter and part C of subchapter I of chapter 34 of Title 42. Such information shall also include information on the various payment options available for student loans, including income-sensitive and income-based repayment plans for loans made, insured, or guaranteed under part B of this subchapter and income-contingent and income-based repayment plans for loans made under part C of this subchapter. In addition, such information shall include information to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, and finance charges, and samples of loan consolidation profiles to illustrate such consequences. The Secretary shall provide information concerning the specific terms and conditions under which students may obtain partial or total cancellation or defer repayment of loans for service, shall indicate (in terms of the Federal minimum wage) the maximum level of compensation and allowances that a student borrower may receive from a tax-exempt organization to qualify for a deferment, and shall explicitly state that students may qualify for such partial cancellations or deferments when they serve as a paid employee of a tax-exempt organization. The Secretary shall also provide information on loan forbearance, including the increase in debt that results from capitalization of interest. Such information shall be provided by eligible institutions and eligible lenders at any time that information regarding loan availability is provided to any student.

(2) The Secretary, to the extent the information is available, shall compile information describing State and other prepaid tuition programs and savings programs and disseminate such information to States, eligible institutions, students, and parents in departmental publications.

(3) The Secretary, to the extent practicable, shall update the Department's Internet site to include direct links to databases that contain information on public and private financial assistance programs. The Secretary shall only provide direct links to databases that can be accessed without charge and shall make reasonable efforts to verify that the databases included in a direct link are not providing fraudulent information. The Secretary shall prominently display adjacent to any such direct link a disclaimer indicating that a direct link to a database does not constitute an endorsement or recommendation of the database, the provider of the database, or any services or products of such provider. The Secretary shall provide additional direct links to information resources from which students may obtain information about fraudulent and deceptive practices in the provision of services related to student financial aid.

(4) The Secretary shall widely publicize the location of the information described in paragraph (1) among the public, eligible institutions, and eligible lenders, and promote the use of such information by prospective students, enrolled students, families of prospective and enrolled students, and borrowers.

(e) Disclosures required with respect to athletically related student aid

(1) Each institution of higher education which participates in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 and is attended by students receiving athletically related student aid shall annually submit a report to the Secretary which contains--

(A) the number of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track, and all other sports combined;

(B) the number of students at the institution of higher education, broken down by race and sex;

(C) the completion or graduation rate for students at the institution of higher education who received athletically related student aid broken down by race and sex in the following sports: basketball, football, baseball, cross country/track and all other sports combined;

(D) the completion or graduation rate for students at the institution of higher education, broken down by race and sex;

(E) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education who received athletically related student aid broken down by race and sex in the following categories: basketball, football, baseball, cross country/track, and all other sports combined; and

(F) the average completion or graduation rate for the 4 most recent completing or graduating classes of students at the institution of higher education broken down by race and sex.

(2) When an institution described in paragraph (1) of this subsection offers a potential student athlete athletically related student aid, such institution shall provide to the student and the student's parents, guidance counselor, and coach the information contained in the report submitted by such institution pursuant to paragraph (1). If the institution is a member of a national collegiate athletic association that compiles graduation rate data on behalf of the association's member institutions that the Secretary determines is substantially comparable to the information described in paragraph (1), the distribution of the compilation of such data to all secondary schools in the United States shall fulfill the responsibility of the institution to provide information to a prospective student athlete's guidance counselor and coach.

(3) For purposes of this subsection, institutions may--

(A) exclude from the reporting requirements under paragraphs (1) and (2) the completion or graduation rates of students and student athletes who leave school to serve in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government; or

(B) in cases where the students described in subparagraph (a) represent 20 percent or more of the certificate- or degree-seeking, full- time, undergraduate students at the institution, calculate the completion or graduation rates of such students by excluding from the calculations described in paragraph (1) the time period such students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(4) Each institution of higher education described in paragraph (1) may provide supplemental information to students and the Secretary showing the completion or graduation rate when such completion or graduation rate includes students transferring into and out of such institution.

(5) The Secretary, using the reports submitted under this subsection, shall compile and publish a report containing the information required under paragraph (1) broken down by--

(A) individual institutions of higher education; and

(B) athletic conferences recognized by the National Collegiate Athletic Association and the National Association of Intercollegiate Athletics.

(6) The Secretary shall waive the requirements of this subsection for any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection.

(7) The Secretary, in conjunction with the National Junior College Athletic Association, shall develop and obtain data on completion or graduation rates from two-year colleges that award athletically related student aid. Such data shall, to the extent practicable, be consistent with the reporting requirements set forth in this section.

(8) For purposes of this subsection, the term "athletically related student aid" means any scholarship, grant, or other form of financial assistance the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution of higher education in order to be eligible to receive such assistance.

(9) The reports required by this subsection shall be due each July 1 and shall cover the 1-year period ending August 31 of the preceding year.

(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42, other than a foreign institution higher education, shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus res-

idences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including--

(i) the law enforcement authority of campus security personnel;

(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and

(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available--

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson; and

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 1011i of this title.

(I) A statement advising the campus community where law enforcement agency information provided by a State under section 14071(j) of Title 42, concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to--

(i) immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

(iii) test emergency response and evacuation procedures on an annual basis.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4)(A) Each institution participating in any program under this subchapter [20 U.S.C.A. § 1070 et seq.] and part C of subchapter I of chapter 34 of Title 42 [42 U.S.C.A. § 2751 et seq.] that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including--

(i) the nature, date, time, and general location of each crime; and

(ii) the disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security author- ity.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 [42 U.S.C.A. § 2751 et seq.] shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall--

(A) review such statistics and report to the authorizing committees on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The term "campus" means--

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term "noncampus building or property" means--

(I) any building or property owned or controlled by a student organization recognized by the institution; and

(II) any building or property (other than a branch campus) owned or controlled by an institution of higher

education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term "public property" means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this sec- tion.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)(A) Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding--

(i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that--

(I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur--

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 1094(c)(3)(B) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 1094(c)(3)(B) of this title.

(14)(A) Nothing in this subsection may be construed to--

(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(15) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

(16) The Secretary may seek the advice and counsel of the Attorney General concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

(17) Nothing in this subsection shall be construed to permit an institution, or an officer, employee, or agent of an institution, participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with respect to the implementation of any provision of this subsection.

(18) This subsection may be cited as the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act".

(g) Data required

(1) In general

Each coeducational institution of higher education that participates in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42, and has an intercollegiate athletic program, shall annually, for the immediately preceding academic year, prepare a report that contains the following information regarding intercollegiate athletics:

(A) The number of male and female full-time undergraduates that attended the institution.

(B) A listing of the varsity teams that competed in intercollegiate athletic competition and for each such team the following data:

(i) The total number of participants, by team, as of the day of the first scheduled contest for the team.

(ii) Total operating expenses attributable to such teams, except that an institution may also report such expenses on a per capita basis for each team and expenditures attributable to closely related teams such as track and field or swimming and diving, may be reported together, although such combinations shall be reported separately for men's and women's teams.

(iii) Whether the head coach is male or female and whether the head coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as head coaches shall be con-

sidered to be head coaches for the purposes of this clause.

(iv) The number of assistant coaches who are male and the number of assistant coaches who are female for each team and whether a particular coach is assigned to that team on a full-time or part-time basis. Graduate assistants and volunteers who serve as assistant coaches shall be considered to be assistant coaches for the purposes of this clause.

(C) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, separately for men's and women's teams overall.

(D) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(E) The total amount of expenditures on recruiting, separately for men's and women's teams overall.

(F) The total annual revenues generated across all men's teams and across all women's teams, except that an institution may also report such revenues by individual team.

(G) The average annual institutional salary of the head coaches of men's teams, across all offered sports, and the average annual institutional salary of the head coaches of women's teams, across all offered sports.

(H) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports.

(I)(i) The total revenues, and the revenues from football, men's basketball, women's basketball, all other men's sports combined and all other women's sports combined, derived by the institution from the institution's intercollegiate athletics activities.

(ii) For the purpose of clause (i), revenues from intercollegiate athletics activities allocable to a sport shall include (without limitation) gate receipts, broadcast revenues, appearance guarantees and options, concessions, and advertising, but revenues such as student activities fees or alumni contributions not so allocable shall be included in the calculation of total revenues only.

(J)(i) The total expenses, and the expenses attributable to football, men's basketball, women's basketball, all other men's sports combined, and all other women's sports combined, made by the institution for the institution's intercollegiate athletics activities.

(ii) For the purpose of clause (i), expenses for intercollegiate athletics activities allocable to a sport shall include (without limitation) grants-in-aid, salaries, travel, equipment, and supplies, but expenses such as general and administrative overhead not so allocable shall be included in the calculation of total expenses only.

(2) Special rule

For the purposes of subparagraph (G), [FN1] if a coach has responsibilities for more than one team and the institution does not allocate such coach's salary by team, the institution should divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(3) Disclosure of information to students and public

An institution of higher education described in paragraph (1) shall make available to students and potential students, upon request, and to the public, the information contained in the report described in paragraph (1), except that all students shall be informed of their right to request such information.

(4) Submission; report; information availability

(A) On an annual basis, each institution of higher education described in paragraph (1) shall provide to the Secretary, within 15 days of the date that the institution makes available the report under paragraph (1), the information contained in the report.

(B) The Secretary shall ensure that the reports described in subparagraph (A) are made available to the public within a reasonable period of time.

(C) Not later than 180 days after October 7, 1998, the Secretary shall notify all secondary schools in all States regarding the availability of the information made available under paragraph (1), and how such information may be accessed.

(D) Redesignated (C)

(5) "Operating expenses" defined

For the purposes of this subsection, the term "operating expenses" means expenditures on lodging and meals, transportation, officials, uniforms and equipment.

(h) Transfer of credit policies

(1) Disclosure

Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall publicly disclose, in a readable and comprehensible manner, the transfer of credit policies established by the institution which shall include a statement of the institution's current transfer of credit policies that includes, at a minimum--

(A) any established criteria the institution uses regarding the transfer of credit earned at another institution of higher education; and

(B) a list of institutions of higher education with which the institution has established an articulation agreement.

(2) Rule of construction

Nothing in this subsection shall be construed to--

(A) authorize the Secretary or the National Advisory Committee on Institutional Quality and Integrity to require particular policies, procedures, or practices by institutions of higher education with respect to transfer of credit;

(B) authorize an officer or employee of the Department to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any institution of higher education, or over any accrediting agency or association;

(C) limit the application of the General Education Provisions Act; or

(D) create any legally enforceable right on the part of a student to require an institution of higher education to accept a transfer of credit from another institution.

(i) Disclosure of Fire Safety Standards and Measures--

(1) Annual fire safety reports on student housing required

Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 that maintains on-campus student housing facilities shall, on an annual basis, publish a fire safety report, which shall contain information with respect to the campus fire safety practices and standards of that institution, including--

(A) statistics concerning the following in each on-campus student housing facility during the most recent calendar years for which data are available:

(i) the number of fires and the cause of each fire;

(ii) the number of injuries related to a fire that result in treatment at a medical facility;

(iii) the number of deaths related to a fire; and

(iv) the value of property damage caused by a fire;

(B) a description of each on-campus student housing facility fire safety system, including the fire sprinkler system;

(C) the number of regular mandatory supervised fire drills;

(D) policies or rules on portable electrical appliances, smoking, and open flames (such as candles), procedures for evacuation, and policies regarding fire safety education and training programs provided to students, faculty, and staff; and

(E) plans for future improvements in fire safety, if determined necessary by such institution.

(2) Report to the Secretary

Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall, on an annual basis, submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(A).

(3) Current information to campus community

Each eligible institution participating in any program under this subchapter and part C of subchapter I of

chapter 34 of Title 42 shall--

(A) make, keep, and maintain a log, recording all fires in on-campus student housing facilities, including the nature, date, time, and general location of each fire; and

(B) make annual reports to the campus community on such fires.

(4) Responsibilities of the Secretary

The Secretary shall--

(A) make the statistics submitted under paragraph (1)(A) to the Secretary available to the public; and

(B) in coordination with nationally recognized fire organizations and representatives of institutions of higher education, representatives of associations of institutions of higher education, and other organizations that represent and house a significant number of students--

(i) identify exemplary fire safety policies, procedures, programs, and practices, including the installation, to the technical standards of the National Fire Protection Association, of fire detection, prevention, and protection technologies in student housing, dormitories, and other buildings;

(ii) disseminate the exemplary policies, procedures, programs and practices described in clause (i) to the Administrator of the United States Fire Administration;

(iii) make available to the public information concerning those policies, procedures, programs, and practices that have proven effective in the reduction of fires; and

(iv) develop a protocol for institutions to review the status of their fire safety systems.

(5) Rules of construction

Nothing in this subsection shall be construed to--

(A) authorize the Secretary to require particular policies, procedures, programs, or practices by institutions of higher education with respect to fire safety, other than with respect to the collection, reporting, and dissemination of information required by this subsection;

(B) affect section 1232g of this title or the regulations issued under section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note);

(C) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(D) establish any standard of care.

(6) Compliance report

The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such com-

pliance.

(7) Evidence

Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(j) Missing person procedures

(1) Option and procedures

Each institution of higher education that provides on-campus housing and participates in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall--

(A) establish a missing student notification policy for students who reside in on-campus housing that--

(i) informs each such student that such student has the option to identify an individual to be contacted by the institution not later than 24 hours after the time that the student is determined missing in accordance with official notification procedures established by the institution under subparagraph (B);

(ii) provides each such student a means to register confidential contact information in the event that the student is determined to be missing for a period of more than 24 hours;

(iii) advises each such student who is under 18 years of age, and not an emancipated individual, that the institution is required to notify a custodial parent or guardian not later 24 hours after the time that the student is determined to be missing in accordance with such procedures;

(iv) informs each such residing student that the institution will notify the appropriate law enforcement agency not later than 24 hours after the time that the student is determined missing in accordance with such procedures; and

(v) requires, if the campus security or law enforcement personnel has been notified and makes a determination that a student who is the subject of a missing person report has been missing for more than 24 hours and has not returned to the campus, the institution to initiate the emergency contact procedures in accordance with the student's designation; and

(B) establish official notification procedures for a missing student who resides in on-campus housing that--

(i) includes procedures for official notification of appropriate individuals at the institution that such student has been missing for more than 24 hours;

(ii) requires any official missing person report relating to such student be referred immediately to the institution's police or campus security department; and

(iii) if, on investigation of the official report, such department determines that the missing student has been missing for more than 24 hours, requires--

(I) such department to contact the individual identified by such student under subparagraph (A)(i);

(II) if such student is under 18 years of age, and not an emancipated individual, the institution to immediately contact the custodial parent or legal guardian of such student; and

(III) if subclauses (I) or (II) do not apply to a student determined to be a missing person, inform the appropriate law enforcement agency.

(2) Rule of construction

Nothing in this subsection shall be construed--

(A) to provide a private right of action to any person to enforce any provision of this subsection; or

(B) to create a cause of action against any institution of higher education or any employee of the institution for any civil liability.

(k) Notice to students concerning penalties for drug violations

(1) Notice upon enrollment

Each institution of higher education shall provide to each student, upon enrollment, a separate, clear, and conspicuous written notice that advises the student of the penalties under section 1091(r) of this title.

(2) Notice after loss of eligibility

An institution of higher education shall provide in a timely manner to each student who has lost eligibility for any grant, loan, or work-study assistance under this subchapter and part C of subchapter I of chapter 34 of Title 42 as a result of the penalties listed under 1091(r)(1) of this title a separate, clear, and conspicuous written notice that notifies the student of the loss of eligibility and advises the student of the ways in which the student can regain eligibility under section 1091(r)(2) of this title.

(l) Entrance counseling for borrowers

(1) Disclosure required prior to disbursement

(A) In general

Each eligible institution shall, at or prior to the time of a disbursement to a first-time borrower of a loan made, insured, or guaranteed under part B of this subchapter (other than a loan made pursuant to section 1078-3 of this title or a loan made on behalf of a student pursuant to section 1078-2 of this title) or made under part C of this subchapter (other than a Federal Direct Consolidation Loan or a Federal Direct PLUS loan made on behalf of a student), ensure that the borrower receives comprehensive information on the terms and conditions of the loan and of the responsibilities the borrower has with respect to such loan in accordance with subparagraph (B). Such information--

(i) shall be provided in a simple and understandable manner; and

(ii) may be provided--

(I) during an entrance counseling session conduction in person;

(II) on a separate written form provided to the borrower that the borrower signs and returns to the institution; or

(III) online, with the borrower acknowledging receipt of the information.

(B) Use of interactive programs

The Secretary shall encourage institutions to carry out the requirements of subparagraph (A) through the use of interactive programs that test the borrower's understanding of the terms and conditions of the borrower's loans under part B or C of this subchapter, using simple and understandable language and clear formatting.

(2) Information to be provided

The information to be provided to the borrower under paragraph (1)(A) shall include the following:

(A) To the extent practicable, the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance.

(B) An explanation of the use of the master promissory note.

(C) Information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary.

(D) In the case of a loan made under section 1078-2 of this title or 1078-8 of this title, a Federal Direct PLUS Loan, or a Federal Direct Unsubsidized Stafford Loan, the option of the borrower to pay the interest while the borrower is in school.

(E) The definition of half-time enrollment at the institution, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment.

(F) An explanation of the importance of contacting the appropriate offices at the institution of higher education if the borrower withdraws prior to completing the borrower's program of study so that the institution can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation.

(G) Sample monthly repayment amounts based on--

(i) a range of levels of indebtedness of--

(I) borrowers of loans under section 1078 or 1078-8 of this title; and

(II) as appropriate, graduate borrowers of loans under section 1078, 1078-2, or 1078-8 of this title; or

(ii) the average cumulative indebtedness of other borrowers in the same program as the borrower at the same institution.

(H) The obligation of the borrower to repay the full amount of the loan, regardless of whether the borrower completes or does not complete the program in which the borrower is enrolled within the regular time for program completion.

(I) The likely consequences of default on the loan, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation.

(J) Information on the National Student Loan Data System and how the borrower can access the borrower's records.

(K) The name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(m) Disclosures of reimbursements for service on advisory boards

(1) Disclosure

Each institution of higher education participating in any program under subchapter IV of this chapter and subchapter I of chapter 32 of Title 42 shall report, on an annual basis, to the Secretary, any reasonable expenses paid or provided under section 1650(d) of Title 15 to any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other financial aid of the institution. Such reports shall include--

(A) the amount for each specific instance of reasonable expenses paid or provided;

(B) the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) the dates of the activity for which the expenses were paid or provided; and

(D) a brief description of the activity for which the expenses were paid or provided.

(2) Report to Congress

The Secretary shall summarize the information received from institutions of higher education under paragraph (1) in a report and transmit such report annually to the authorizing committees.

CREDIT(S)

(Pub.L. 89-329, Title IV, § 485, as added Pub.L. 99-498, Title IV, § 407(a), Oct. 17, 1986, 100 Stat. 1482, and amended Pub.L. 100-50, § 15(10), (11), June 3, 1987, 101 Stat. 357; Pub.L. 101-542, Title I, § 103(a), (b), 104(a), Title II, § 204(a), Nov. 8, 1990, 104 Stat. 2381, 2383, 2385; Pub.L. 101-610, Title II, §§ 201, 202, 203, Nov. 16, 1990, 104 Stat. 3171, 3172; Pub.L. 102-26, § 10(a) to (d), Apr. 9, 1991, 105 Stat. 128; Pub.L. 102-164, Title VI, § 603, Nov. 15, 1991, 105 Stat. 1066; Pub.L. 102-325, Title IV, § 486(a), (b), (c)(1), (2), July 23, 1992, 106 Stat. 620, 621; Pub.L. 103-208, § 2(h)(28) to (37), (k)(9), Dec. 20, 1993, 107 Stat. 2477, 2486; Pub.L. 103-382, Title III, § 360B(c), Oct. 20, 1994, 108 Stat. 3970; Pub.L. 104-208, Div. A, Title I, § 101(e) [Title III, § 308], Sept. 30, 1996, 110 Stat. 3009-262; Pub.L. 105-18, Title VI, § 60001, June 12, 1997, 111 Stat. 214; Pub.L. 105-244, Title I, § 102(b)(3), Title IV, § 486, Oct. 7, 1998, 112 Stat. 1622, 1741; Pub.L. 106-386, Div. B, Title VI, § 1601(c)(1), Oct. 28, 2000, 114 Stat. 1537; Pub.L. 110-315, Title I, § 103(b)(11), Title IV, § 488, Title X, § 1011(c), Aug. 14, 2008, 122 Stat. 3090, 3293, 3482.)

[FN1] So in original. Probably should be "paragraph (1)(G)".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1986 Acts. House Report Nos. 99-383, 99-598, House Conference Report No. 99-861, and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 2572.

1987 Acts. House Report No. 100-44, see 1987 U.S. Code Cong. and Adm. News, p. 339.

1990 Acts. Senate Report No. 101-176 and House Conference Report No. 101-893, see 1990 U.S. Code Cong. and Adm. News, p. 4446.

House Report No. 101-518, see 1990 U.S. Code Cong. and Adm. News, p. 3363.

1992 Acts. House Report No. 102-447, House Conference Report No. 102-630, and Statement by President, see 1992 U.S. Code and Adm. News, p. 334.

1994 Acts. House Report No. 103-425 and House Conference Report No. 103-761, see 1994 U.S. Code Cong. and Adm. News, p. 2807.

1997 Acts. For Related Reports and Statements by President, see 1997 U.S. Code Cong. and Admin. News, p. 149.

1998 Acts. House Conference Report No. 105-750, see 1998 U.S. Code Cong. and Adm. News, p. 417.

2000 Acts. House Report No. 106-939, see 2000 U.S. Code Cong. and Adm. News, p. 1380.

2008 Acts. House Conference Report No. 110-803, see 2008 U.S. Code Cong. and Adm. News, p. 1124.

References in Text

This subchapter and part C of subchapter I of chapter 34 of Title 42, referred to in text, originally read "this title", meaning Title IV of the Higher Education Act of 1965, Pub.L. 89-329, Title IV, § 400 et seq., as added and amended, which is classified principally to this subchapter, 20 U.S.C.A. § 1070 et seq., and part C of subchapter I of chapter 34 of Title 42, 42 U.S.C.A. § 2751 et seq.

Subchapter IV of this chapter and part C of subchapter I of chapter 34 of Title 42, referred to in text, originally read "title IV", meaning Title IV of the Higher Education Act of 1965, Pub.L. 89-329, Title IV, § 400 et seq., as added and amended, which is classified principally to subchapter IV of this chapter, 20 U.S.C.A. § 1070 et seq. and part C of subchapter I of chapter 34 of Title 42, 42 U.S.C.A. § 2751 et seq.

Parts B, C, and D of this subchapter, referred to in subsecs. (a)(1)(M), (b)(1)(A)(vii), originally read "parts B, D,

and E", meaning parts B, D, and E of Title IV of the Higher Education Act of 1965, Pub.L. 89-329, § 421 et seq., 451 et seq., and 461 et seq., as added and amended, which are classified principally to parts B, C, and D of this subchapter, 20 U.S.C.A. §§ 1071 et seq., 1087a et seq., and 1087aa et seq.

The Peace Corps Act, referred to in subsec. (a)(1)(M), is Pub.L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (a)(1)(M), is Pub.L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (section 4950 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

Part B or C of this subchapter, referred to in subsecs. (a)(7), (l)(1)(B), originally read "part B or D", meaning part B or D of Title IV of the Higher Education Act of 1965, Pub.L. 89-329, §§ 421 et seq. and 451 et seq., as added and amended, which are classified principally to parts B and C of this subchapter, 20 U.S.C.A. §§ 1071 et seq. and 1087a et seq.

Part B of this subchapter, referred to in subsecs. (b)(1)(A), (d)(1), (l)(1)(A), originally read "part B", meaning part B of Title IV of the Higher Education Act of 1965, Pub.L. 89-329, § 421 et seq., which is classified principally to part B of this subchapter, 20 U.S.C.A. § 1071 et seq.

Part C of this subchapter, referred to in subsecs. (b)(1)(A), (d)(1), (l)(1)(A), originally read "part D" meaning part D of Title IV of the Higher Education Act of 1965, Pub.L. 89-329, § 451 et seq., as added and amended, which is classified principally to part C of this subchapter, 20 U.S.C.A. § 1087a et seq.

Part D of this subchapter, referred to in subsec. (b)(1)(A), originally read "part E of this title", meaning part E of Title IV of the Higher Education Act of 1965, Pub.L. 89-329, § 461 et seq., as added and amended, which is classified principally to part D of this subchapter, 20 U.S.C.A. § 1087aa et seq.

The Hate Crime Statistics Act, referred to in subsec. (f)(7), is Pub.L. 101-275, Apr. 23, 1990, 104 Stat. 140, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (i)(5)(B), is Pub.L. 104-191, Aug. 21, 1996, 110 Stat. 1936. Section 264 is classified as a note set out under 42 U.S.C.A. § 1320d-2.

Amendments

2008 Amendments. Subsec. (a)(1)(G). Pub.L. 110-315, § 488(a)(1)(A), struck out "program, and" and inserted "program,"; inserted ", and (iv) any plans by the institution for improving the academic program of the institution" after "instructional personnel".

Subsec. (a)(1)(M). Pub.L. 110-315, § 488(a)(1)(B), rewrote subpar. (M), which formerly read:

"(M) the terms and conditions under which students receiving guaranteed student loans under part B of this subchapter or direct student loans under part D of this subchapter, or both, may--

"(i) obtain deferral of the repayment of the principal and interest for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)) or under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.], or for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service, and

"(ii) obtain partial cancellation of the student loan for service under the Peace Corps Act (as established by the Peace Corps Act (22 U.S.C.A. § 2501 et seq.)) under the Domestic Volunteer Service Act of 1973 [42 U.S.C.A. § 4950 et seq.] or, for comparable full-time service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service;".

Subsec. (a)(1)(N). Pub.L. 110-315, § 488(a)(1)(C), struck out "and" following the semicolon at the end.

Subsec. (a)(1)(O). Pub.L. 110-315, § 488(a)(1)(D), struck out the period at the end and inserted a semicolon.

Subsec. (a)(1)(P) to (V). Pub.L. 110-315, § 488(a)(1)(E), added subpars. (P) to (V).

Subsec. (a)(4). Pub.L. 110-315, § 488(a)(2), rewrote par. (4), which formerly read: "For purposes of this section, institutions may exclude from the information disclosed in accordance with subparagraph (L) of paragraph (1) the completion or graduation rates of students who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government."

Subsec. (a)(7). Pub.L. 110-315, § 488(a)(3), added par. (7).

Subsec. (b)(1)(A). Pub.L. 110-315, § 488(b), rewrote subsec. (b)(1)(A), which formerly read:

"(b) Exit counseling for borrowers

"(1)(A) Each eligible institution shall, through financial aid officers or otherwise, make available counseling to borrowers of loans which are made, insured, or guaranteed under part B (other than loans made pursuant to section 1078-2 of this title) of this subchapter or made under part C or D of this subchapter prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution. The counseling required by this subsection shall include--

"(i) the average anticipated monthly repayments, a review of the repayment options available, and such debt and management strategies as the institution determines are designed to facilitate the repayment of such indebtedness; and

"(ii) the terms and conditions under which the student may obtain partial cancellation or defer repayment of the principal and interest pursuant to sections 1078(b), 1087dd(c)(2), and 1087ee of this title."

Subsec. (d)(1). Pub.L. 110-315, § 488(c)(1), inserted the following sentence: "Such information shall also include information on the various payment options available for student loans, including income-sensitive and income-based repayment plans for loans made, insured, or guaranteed under part B and income-contingent and income-based repayment plans for loans made under part C of this subchapter." after "under this subchapter and part C of subchapter I of chapter 34 of Title 42."; inserted the following sentence: "The Secretary shall also provide information on loan forbearance, including the increase in debt that results from capitalization of interest." after "tax-exempt organization.".

Subsec. (d)(4). Pub.L. 110-315, § 488(c)(2), added par. (4).

Subsec. (e)(3). Pub.L. 110-315, § 488(d), rewrote par. (3), which formerly read: "For purposes of this subsection, institutions may exclude from the reporting requirements under paragraphs (1) and (2) the completion or graduation rates of students and student athletes who leave school to serve in the armed services, on official church missions, or with a recognized foreign aid service of the Federal Government."

Subsec. (f)(1). Pub.L. 110-315, § 488(e)(1)(A), in the introductory matter preceding subpar. (A), inserted ", other than a foreign institution higher education," after "under this subchapter and part C of subchapter I of chapter 34 of Title 42".

Subsec. (f)(1)(C)(i). Pub.L. 110-315, § 488(e)(1)(B), rewrote cl. (i), which formerly read: "the enforcement authority of security personnel, including their working relationship with State and local police agencies; and".

Subsec. (f)(1)(C)(ii). Pub.L. 110-315, § 488(e)(1)(B), rewrote cl. (ii), which formerly read: "policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies."

Subsec. (f)(1)(C)(iii). Pub.L. 110-315, § 488(e)(1)(B), added cl. (iii).

Subsec. (f)(1)(F)(ii). Pub.L. 110-315, § 488(e)(1)(C), struck out "clause (i), and" and inserted "clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of"; inserted a comma after "any person".

Subsec. (f)(1)(J). Pub.L. 110-315, § 488(e)(1)(D), added subpar. (J).

Subsec. (f)(5)(A). Pub.L. 110-315, § 103(b)(11), struck out "Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate" and inserted "authorizing committees".

Subsec. (f)(15). Pub.L. 110-315, § 488(e)(2), (3), redesignated former par. (15) as (18) and inserted a new par. (15).

Subsec. (f)(16). Pub.L. 110-315, § 488(e)(3), added par. (16).

Subsec. (f)(17). Pub.L. 110-315, § 488(e)(3), added par. (17).

Subsec. (f)(18). Pub.L. 110-315, § 488(e)(2), redesignated former par. (15) as (18).

Subsec. (g)(4)(B). Pub.L. 110-315, § 488(f)(1), (2), struck out former subpar. (B) and redesignated former subpar. (C) as (B). Prior to repeal, former subpar. (B) read:

"(B) The Secretary shall prepare a report regarding the information received under subparagraph (A) and submit such report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate by April 1, 2000. The report shall--

"(i) summarize the information and identify trends in the information;

"(ii) aggregate the information by divisions of the National Collegiate Athletic Association; and

"(iii) contain information on each individual institution of higher education."

Pub.L. 110-315, § 488(f)(3), in subpar. (B) as so redesignated, struck out "and the report to Congress described in subparagraph (B)" after "described in subparagraph (A)".

Subsec. (g)(4)(C). Pub.L. 110-315, § 488(f)(2), redesignated former subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub.L. 110-315, § 488(f)(4), in subpar. (C) as so redesignated, struck out "the information reported under subparagraph (B) and" after "the availability of".

Subsec. (g)(4)(D). Pub.L. 110-315, § 488(f)(2), redesignated subpar. (D) as (C).

Subsecs. (h) to (l). Pub.L. 110-315, § 488(g), added subsecs. (h) to (l).

Subsec. (m). Pub.L. 110-315, § 1011(c), added subsecs. (m).

2000 Amendments. Subsec. (f)(1)(I). Pub.L. 106-386, § 1601(c)(1), added subpar. (I).

1998 Amendments. Subsec. (a)(1). Pub.L. 105-244, § 486(a)(1)(A), (B), substituted "upon request, through appropriate publications, mailings, and electronic media, to an enrolled student and to any prospective student." for ", through appropriate publications and mailings, to all current students, and to any prospective student upon request." and, after the second sentence, inserted "Each eligible institution shall, on an annual basis, provide to all enrolled students a list of the information that is required to be provided by institutions to students by this section and section 444 of the General Education Provisions Act (also referred to as the Family Educational Rights and Privacy Act of 1974), together with a statement of the procedures required to obtain such informa- tion.".

Subsec. (a)(1)(F). Pub.L. 105-244, § 486(a)(1)(C), rewrote subpar. (F), which formerly read:

"(F) a statement of the refund policy of the institution, as determined under section 1091b of this title, for the return of unearned tuition and fees or other refundable portion of cost, as described in subparagraph (E) of this paragraph, which refunds shall be credited in the following order:

"(i) to outstanding balances on loans under part B of this subchapter for the period of enrollment for which a refund is required,

"(ii) to outstanding balances on loans under part C of this subchapter for the period of enrollment for which a refund is required,

"(iii) to outstanding balances on loans under part D of this subchapter for the period of enrollment for which a refund is required,

"(iv) to awards under subpart 1 of part A of this subchapter,

"(v) to awards under subpart 3 of part A of this subchapter,

"(vi) to other student assistance, and

"(vii) to the student;

"(viii) Redesignated (vii)".

Subsec. (a)(1)(M) to (O). Pub.L. 105-244, § 486(a)(1)(D) to (F), struck out "and" at the end of subpar. (M); substituted "; and" for the period at the end of subpar. (N); and added subpar. (O).

Subsec. (a)(3)(A). Pub.L. 105-244, § 486(a)(2), rewrote subpar. (A), which formerly read: "shall, for any academic year beginning more than 270 days after the Secretary first prescribes final regulations pursuant to such subparagraph (L), be made available to current and prospective students prior to enrolling or entering into any financial obligation; and;".

Subsec. (a)(6). Pub.L. 105-244, § 486(a)(3), added par. (6).

Subsec. (b)(1)(A). Pub.L. 105-244, § 486(b)(1), substituted "borrowers of loans" for "borrowers (individually or in groups) of loans".

Subsec. (b)(2)(C). Pub.L. 105-244, § 486(b)(2), added subpar. (C).

Subsec. (d). Pub.L. 105-244, § 486(c), designated existing provisions as par. (1) and former pars. (1) and (2) as par. (1)(A) and (B), and inserted new pars. (2) and (3).

Subsec. (e)(2). Pub.L. 105-244, § 486(d)(1), substituted "and the student's parents, guidance counselor" for "and his parents, his guidance counselor" and added the following sentence: "If the institution is a member of a national collegiate athletic association that compiles graduation rate data on behalf of the association's member institutions that the Secretary determines is substantially comparable to the information described in paragraph (1), the distribution of the compilation of such data to all secondary schools in the United States shall fulfill the responsibility of the institution to provide information to a prospective student athlete's guidance counselor and coach." at the end.

Subsec. (e)(9). Pub.L. 105-244, § 486(d)(2), rewrote par. (9), which formerly read: "This subsection shall not be effective until the first July 1 that follows, by more than 270 days, the date on which the Secretary first prescribes final regulations pursuant to this subsection. The reports required by this subsection shall be due on that July 1 and each succeeding July 1 and shall cover the 1-year period ending August 31 of the preceding year."

Subsec. (f)(1)(F). Pub.L. 105-244, § 486(e)(1)(A), rewrote subpar. (F), which formerly read: "Statistics concerning the occurrence on campus, during the most recent calendar year, and during the 2 preceding calendar years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies--

"(i) murder;

"(ii) sex offenses, forcible or nonforcible;

"(iii) robbery;

"(iv) aggravated assault;

"(v) burglary; and

"(vi) motor vehicle theft."

Subsec. (f)(1)(H), (I). Pub.L. 105-244, § 486(e)(1)(B), (C), struck out subpar. (H) and redesignated subpar. (I) as (H). Prior to repeal, former subpar. (H) read:

"(H) Statistics concerning the number of arrests for the following crimes occurring on campus:

"(i) liquor law violations;

"(ii) drug abuse violations; and

"(iii) weapons possessions."

Pub.L. 105-244, § 102(b)(3), substituted "section 1011i of this title" for "section 1145g of this title" in subpar. (I), now redesignated (H).

Subsec. (f)(4). Pub.L. 105-244, § 486(e)(5), (6), redesignated former par. (4) as (5) and inserted a new par. (4). Former par. (5) redesignated (6).

Subsec. (f)(5). Pub.L. 105-244, § 486(e)(5), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Pub.L. 105-244, § 486(e)(2)(A), (B), substituted "On an annual basis, each" for "Upon the request of the Secretary, each" and "paragraph (1)(F)" for "paragraphs (1)(F) and (1)(H)" in former par. (4), prior to the redesignation of such par. (4) as (5).

Subsec. (f)(5)(A). Pub.L. 105-244, § 486(e)(2)(C) to (E), substituted "Education and the Workforce" for "Education and Labor"; substituted "September 1, 2000" for "September 1, 1995"; and struck out "and" at the end of former par. (4)(A), prior to the redesignation of such par. (4)(A) as (5)(A).

Subsec. (f)(5)(B), (C). Pub.L. 105-244, § 486(e)(2)(F), (G), redesignated former subpar. (B) as (C) and inserted a new subpar. (B) in former par. (4), prior to the redesignation of such par. (4) as (5).

Subsec. (f)(6). Pub.L. 105-244, § 486(e)(5), redesignated former par. (5) as (6).

Subsec. (f)(6)(A). Pub.L. 105-244, § 486(e)(3), rewrote former par. (5)(A), prior to redesignated as par. (6)(A). Prior to such redesignation, former par. (5)(A) read:

"(5)(A) For purposes of this subsection, the term 'campus' includes--

"(i) any building or property owned or controlled by the institution of higher education within the same reasonably contiguous geographic area and used by the institution in direct support of, or related to its educational purposes; or

"(ii) any building or property owned or controlled by student organizations recognized by the institution."

Subsec. (f)(7). Pub.L. 105-244, § 486(e)(4), (5), substituted "paragraph (1)(F)" for "paragraphs (1)(F) and (1)(H)" and added "Such statistics shall not identify victims of crimes or persons accused of crimes." at the end

of former par. (6) and redesignated such former par. (6) as par. (7). Former par. (7) was redesignated (8).

Subsec. (f)(8). Pub.L. 105-244, § 486(e)(5), redesignated former par. (7) as (8).

Subsec. (f)(9) to (15). Pub.L. 105-244, § 486(e)(7), added pars. (9) to (15).

Subsec. (g)(1)(I), (J). Pub.L. 105-244, § 486(f)(1), added subpars. (I) and (J).

Subsec. (g)(4). Pub.L. 105-244, § 486(f)(3), (4), redesignated former par. (4) as (5) and inserted a new par. (4).

Subsec. (g)(5). Pub.L. 105-244, § 486(f)(2), (3), struck out former par. (5) and redesignated former par. (4) as (5). Prior to repeal, former par. (5) read:

"(5) Regulations and effective date

"The Secretary shall issue final regulations to implement the requirements of this subsection not later than 180 days following the enactment of this subsection. Each institution described in paragraph (1) shall make available its first report pursuant to this section not later than October 1, 1996."

1997 Amendments. Subsec. (a)(3)(B). Pub.L. 105-18, Title VI, § 60001(a)(1), substituted "August 31" for "June 30".

Subsec. (e)(9). Pub.L. 105-18, Title VI, § 60001(a)(2), substituted "August 31" for "August 30".

1996 Amendments. Subsec. (e)(9). Pub.L. 104-208, § 101(e) [§ 308], substituted "August 30" for "June 30".

1994 Amendments. Subsec. (g). Pub.L. 103-382, § 360B(c), added subsec. (g).

1993 Amendments. Subsec. (a)(1)(F)(i) to (iii). Pub.L. 103-208, § 2(h)(28), inserted "for the period of enrollment for which a refund is required", following "of this subchapter" wherever appearing.

Subsec. (a)(1)(F)(iv). Pub.L. 103-208, § 2(h)(29), inserted "under" following "awards".

Subsec. (a)(1)(F)(vi). Pub.L. 103-208, § 2(h)(32), redesignated former cl. (vii) as (vi). Former cl. (vi), which related to awards under part C of subchapter I of chapter 34 of Title 42, was struck out.

Subsec. (a)(1)(F)(vii). Pub.L. 103-208, § 2(h)(30), struck out "provided under this subchapter" following "student assistance".

Pub.L. 103-208, § 2(h)(32), redesignated former cl. (viii) as (vii). Former cl. (vii) was redesignated (vi).

Subsec. (a)(1)(F)(viii). Pub.L. 103-208, § 2(h)(31), substituted "student;" for "student.;".

Pub.L. 103-208, § 2(h)(32), redesignated former cl. (viii) as (vii).

Subsec. (a)(1)(L). Pub.L. 103-208, § 2(h)(33), substituted "full-time," for "full-time".

Subsec. (a)(3)(A). Pub.L. 103-208, § 2(h)(34), substituted ", for any academic year beginning more than 270 days after the Secretary first prescribes final regulations pursuant to such subparagraph (L), be made available" for "be available beginning on July 1, 1993, and each year thereafter".

Subsec. (b)(1)(A), (2)(A). Pub.L. 103-208, § 2(h)(35), substituted "under part" for "under parts" wherever appearing.

Subsec. (d). Pub.L. 103-208, § 2(h)(36), substituted "paid employee of a tax-exempt organization." for "paid employee of a tax-exempt organization".

Subsec. (e)(9). Pub.L. 103-208, § 2(h)(37), added subpar. (9).

1992 Amendments. Subsec. (a)(1)(F). Pub.L. 102-325, § 486(a)(1)(A), inserted provisions relating to section 1091b of this title.

Pub.L. 102-325, § 486(a)(1)(B), inserted ", which refunds shall be credited in the following order:" following "paragraph".

Subsec. (a)(1)(F)(i) to (viii). Pub.L. 102-325, § 486(a)(1)(B), added cls. (i) through (viii).

Subsec. (a)(1)(K). Pub.L. 102-325, § 486(a)(2), struck out "and" following "title;".

Subsec. (a)(1)(L). Pub.L. 102-325, § 486(a)(3), as amended by section 2(k)(9) of Pub.L. 103-208, substituted "institutions;" for "institutions.".

Pub.L. 102-325, § 486(a)(4), redesignated former subpar. (L), as added by section 201 of Pub.L. 101-610, as subpar. (M).

Subsec. (a)(1)(M). Pub.L. 102-325, § 486(a)(4), redesignated former subpar. (L), as added by section 201 of Pub.L. 101-610, as subpar. (M).

Pub.L. 102-325, § 486(a)(5), substituted "community service; and" for "community service.".

Subsec. (a)(1)(N). Pub.L. 102-325, § 486(a)(6), added subpar. (N).

Subsec. (b). Pub.L. 102-325, § 486(b), amended section generally, redesignating matter formerly set out preceding par. (1) as par. (1)(A), and, as so redesignated, inserting provisions relating to part C of this subchapter, striking out former par. (1), which related to general information about average student indebtedness under parts B and D of this subchapter, redesignating former par. (2), with minor change, as par. (1)(A)(i), redesignating former par. (3) as par. (1)(A)(ii), and, as so redesignated, substituting provisions relating to sections 1078b, 1077dd(c)(2) and 1087ee of this title for provisions relating to service under Peace Corps Act, Domestic Volunteer Service Act, or comparable service, redesignating portion of matter formerly set out following par. (3) as par. (1)(B), and, as so redesignated, inserting provisions relating to subpar. (A), redesignating portion of matter formerly set out following par. (2) as par. (2)(A), and, as so redesignated, substituting provisions relating to parts C and D of this subchapter for provisions relating to parts D and E of this subchapter, redesignating portion of matter formerly set out following par. (3) as par. (2)(A)(i), (ii) and (iii), adding par. (2)(A)(iv), striking out portion of matter formerly set out following par. (3), which required institution to submit information to holder

of loan made under part B of this subchapter, and adding par. (2)(B).

Subsec. (f)(1)(F)(ii). Pub.L. 102-325, § 486(c)(1), substituted "sex offenses; forcible or nonforcible;" for "rape;".

Subsec. (f)(7). Pub.L. 102-325, § 486(c)(2), added par. (7).

1991 Amendments. Subsec. (a)(1)(L). Pub.L. 102-26, § 10(a), substituted "full-time undergraduate students" for "full-time students".

Subsec. (a)(3)(A). Pub.L. 102-26, § 10(b)(1), added "and" following "financial obligation;".

Subsec. (a)(3)(B). Pub.L. 102-26, § 10(b)(2), substituted a period for "; and" following "the preceding year".

Subsec. (a)(3)(C). Pub.L. 102-26, § 10(b)(3), struck out subpar. (C) which had required that information which was to be disclosed had to be updated not less than biennially.

Subsec. (a)(5). Pub.L. 102-26, § 10(c), added par. (5).

Subsec. (b). Pub.L. 102-164 required institution to require that borrower submit expected permanent address, name and address of expected employer, and address of next of kin during exit interview, and directed submission of this information to holder of loan made under part B of this subchapter.

Subsec. (f)(1). Pub.L. 102-26, § 10(d), substituted "August 1, 1991" for "September 1, 1991" in the provisions preceding subpar. (A) and in subpar. (F) substituted "calendar year" and "calendar years" for "school year" and "school years", respectively.

1990 Amendments. Subsec. (a)(1)(L). Pub.L. 101-610, § 201, added subpar. (L).

Pub.L. 101-542, § 103(a), added subpar. (L).

Subsec. (a)(3), (4). Pub.L. 101-542, § 103(b), added pars. (3) and (4).

Subsec. (b)(3). Pub.L. 101-610, § 202, added par. (3).

Subsec. (d). Pub.L. 101-610, § 203, added provisions requiring Secretary to make available information on cancellation and deferment of loan payments for service, to indicate maximum level of compensation student may receive to qualify for deferment, and to explicitly state that students working as paid employees for tax-exempt organizations may qualify for deferments.

Subsec. (e). Pub.L. 101-542, § 104(a), added subsec. (e).

Subsec. (f). Pub.L. 101-542, § 204(a), added subsec. (f).

1987 Amendments. Subsec. (b). Pub.L. 100-500, § 15(10), inserted "(other than loans made pursuant to section 1078-2 of this title)" after "part B of this subchapter".

Subsec. (d). Pub.L. 100-50, § 15(11), inserted provision that, in addition, such information include information to enable borrowers to assess the practical consequences of loan consolidation, including differences in deferment eligibility, interest rates, monthly payments, and finance charges, and samples of loan consolidation profiles to illustrate such consequences.

Effective and Applicability Provisions

2008 Acts. Except as otherwise provided, Pub.L. 110-315 and the amendments made by such Act shall take effect on Aug. 14, 2008, see Pub.L. 110-315, § 3, set out as an Effective and Applicability Provisions note under 20 U.S.C.A. § 1001.

Except as otherwise provided, amendments made by Title X of Pub.L. 110-315 effective Aug. 14, 2008, with provisions for effective date of regulations, see Pub.L. 110-315, § 1003, set out as an Effective and Applicability Provisions note under 15 U.S.C.A. § 1638

2000 Acts. Pub.L. 106-386, Div. B, Title VI, § 1601(c)(2), Oct. 28, 2000, 114 Stat. 1537, provided that: "The amendment made by this subsection [amending this section] shall take effect 2 years after the date of the enactment of this Act [Oct. 28, 2000]."

1998 Acts. Amendment by Pub.L. 105-244 effective Oct. 1, 1998, except as otherwise provided, see section 3 of Pub.L. 105-244, set out as a note under section 1001 of this title.

1997 Acts. Section 60001(b) of Pub.L. 105-18 provided that:

"(1) **In general.**--Except as provided in paragraph (2), the amendments made by subsection (a) [amending subsecs. (a)(3)(B) and (e)(9) of this section] are effective upon enactment [June 12, 1997].

"(2) **Information dissemination.**--No institution shall be required to comply with the amendment made by subsection (a)(1) [amending subsec. (a)(3)(B) of this section] before July 1, 1998."

1993 Acts. For effective date of amendment by section 2 of Pub.L. 103-208, see section 5 of Pub.L. 103-208, set out as a note under section 1003 of this title.

1992 Acts. Section 486(c)(3) of Pub.L. 102-325 provided that: "The amendment made by this subsection to subparagraph (F)(ii) of section 485(f)(1) of the Act [subsec. (f)(1)(F)(ii) of this section] shall be effective with respect to reports made pursuant to such section on or after September 1, 1993. The statistics required by subparagraph (F) of such section shall--

"(A) in the report required on September 1, 1992, include statistics concerning the occurrence on campus of offenses during the period from August 1, 1991, to July 31, 1992;

"(B) in the report required on September 1, 1993, include statistics concerning the occurrence on campus of offenses during (i) the period from August 1, 1991, to December 31, 1991, and (ii) the calendar year 1992;

"(C) in the report required on September 1, 1994, include statistics concerning the occurrence on campus of offenses during (i) the period from August 1, 1991, to December 31, 1991, and (ii) the calendar years 1992 and 1993; and

"(D) in the report required on September 1 of 1995 and each succeeding year, include statistics concerning the occurrence on campus of offenses during the three calendar years preceding the year in which the report is made."

Amendment by section 486(a), (b) and (c)(2) of Pub.L. 102-325 effective with respect to periods of enrollment beginning on or after July 1, 1993, see section 498(5) of Pub.L. 102-325, set out as a note under section 1088 of this title.

1990 Acts. Section 104(b) of Pub.L. 101-542, as amended Pub.L. 102-26, § 10(e), Apr. 9, 1991, 105 Stat. 128, provided that: "The report to the Secretary of Education required by the amendments made by this section [enacting subsec. (e) of this section] shall be due on July 1, 1993, and annually thereafter, and shall cover the one-year period ending on June 30 of the preceding year.

Section 204(c) of Pub. L. 101-542, provided that: "The amendments made by this section [enacting subsec. (f) of this section] shall take effect on September 1, 1991, except that the requirement of section 485(f)(1)(F) and (H) of the Higher Education Act of 1965 [subsec. (f)(1)(F) and (H) of this section] (as added by this section) shall be applied to require statistics with respect to school years preceding the date of enactment of this Act [Nov. 8, 1990] only to the extent that data concerning such years is reasonably available."

1987 Acts. Amendment by Pub.L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub.L. 99-498, see section 27 of Pub.L. 100-50, set out as a note under section 1001 of this title.

1986 Acts. Section effective Oct. 17, 1986, except as otherwise provided, see section 2 of Pub.L. 99-498, set out as a note under section 1001 of this title.

Subsec. (b) of this section applicable only to periods of enrollment beginning on or after July 1, 1987, see section 407(b) of Pub.L. 99-498, set out as a note under section 1091 of this title.

Change of Name

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Education and Labor of the House of Representatives treated as referring to the Committee on Economic and Educational Opportunities of the House of Representatives, see section 1(a)(3) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Prior Provisions

A prior section 1092, Pub.L. 89-329, Title IV, § 485, as added Pub.L. 96-374, Title IV, § 451(a), Oct. 3, 1980, 94 Stat. 1449, related to institutional and financial assistance information for students, prior to the general revision of this part by Pub.L. 99-498.

Another prior section 1092, Pub.L. 89-329, Title V, § 508, formerly § 502, Nov. 8, 1965, 79 Stat. 1255, renumbered and amended Pub.L. 90-35, §§ 2(b), 7, June 29, 1967, 81 Stat. 82, 93, prohibiting the making of payments for religious purposes for authorized programs, was repealed by Pub.L. 94-482, Title I, § 151(a)(2), Oct. 12, 1976, 90 Stat. 2151.

Model Institution Financial Aid Offer Form

Pub.L. 110-315, Title IV, § 484, Aug. 14, 2008, 122 Stat. 3286, provided that:

"(a) Model format

"The Secretary of Education shall--

"(1) Not later than six months after the date of enactment of the Higher Education Opportunity Act, convene a group of students, families of students, secondary school guidance counselors, representatives of institutions of higher education (including financial aid administrators, registrars, and business officers), and nonprofit consumer groups for the purpose of offering recommendations for improvements that--

"(A) can be made to financial aid offer forms; and

"(B) include the information described in subsection (b);

"(2) develop a model format for financial aid offer forms based on the recommendations of the group; and

"(3) Not later than one year after the date of enactment of the Higher Education Opportunity Act [Aug. 14, 2008]--

"(A) submit recommendations to the authorizing committees (as defined in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003); and

"(B) make the recommendations and model format widely available.

"(b) Contents

"The recommendations developed under subsection (a) for model financial aid offer forms shall include, in a consumer-friendly manner that is simple and understandable, the following:

"(1) Information on the student's cost of attendance, including the following:

"(A) Tuition and fees.

"(B) Room and board costs.

"(C) Books and supplies.

"(D) Transportation.

"(2) The amount of financial aid that the student does not have to repay, such as scholarships, grants, and work-study assistance, offered to the student for such year, and the conditions of such financial aid.

"(3) The types and amounts of loans under part B, D, or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.) for which the student is eligible for such year, and the applicable terms and conditions of such loans.

"(4) The net amount that the student, or the student's family on behalf of the student, will have to pay for the student to attend the institution for such year, equal to--

"(A) the cost of attendance for the student for such year; minus

"(B) the amount of financial aid described in paragraphs (2) and (3) that is offered in the financial aid offer form.

"(5) Where a student or the student's family can seek additional information regarding the financial aid offered.

"(6) Any other information the Secretary of Education determines necessary so that students and parents can make informed student loan borrowing decisions.".

[Except as otherwise provided, Pub.L. 110-315 and the amendments made by such Act shall take effect on Aug. 14, 2008, see Pub.L. 110-315, § 3, set out as an Effective and Applicability Provisions note under 20 U.S.C.A. § 1001.]

Conforming Regulations

Section 401(a) of Pub.L. 101-542 provided that: "The Secretary is authorized to issue regulations to carry out the provisions of this Act [Pub.L. 101-542, for distribution of which, see Short Title Note set out under section 1001 of this title]."

Congressional Findings for Pub.L. 103-382

Section 360B(b) of Pub.L. 103-382 provided that: "The Congress finds that--

"(1) participation in athletic pursuits plays an important role in teaching young Americans how to work on teams, handle challenges and overcome obstacles;

"(2) participation in athletic pursuits plays an important role in keeping the minds and bodies of young Americans healthy and physically fit;

"(3) there is increasing concern among citizens, educators, and public officials regarding the athletic opportunities for young men and women at institutions of higher education;

"(4) a recent study by the National Collegiate Athletic Association found that in Division I-A institutions, only

20 percent of the average athletic department operations budget of $1,310,000 is spent on women's athletics; 15 percent of the average recruiting budget of $318,402 is spent on recruiting female athletes; the average scholarship expenses for men is $1,300,000 and $505,246 for women; and an average of 143 grants are awarded to male athletes and 59 to women athletes;

"(5) female college athletes receive less than 18 percent of the athletics recruiting dollar and less than 24 percent of the athletics operating dollar;

"(6) male college athletes receive approximately $179,000,000 more per year in athletic scholarship grants than female college athletes;

"(7) prospective students and prospective student athletes should be aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students; and

"(8) knowledge of an institution's expenditures for women's and men's athletic programs would help prospective students and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students."

Congressional Findings for Pub.L. 101-542

Section 102 of Pub.L. 101-542 provided that: "The Congress finds that--

"(1) education is fundamental to the development of individual citizens and the progress of the Nation as a whole;

"(2) there is increasing concern among citizens, educators, and public officials regarding the academic performance of students at institutions of higher education;

"(3) a recent study by the National Institute of Independent Colleges and Universities found that just 43 percent of students attending 4-year public colleges and universities and 54 percent of students entering private institutions graduated within 6 years of enrolling;

"(4) the academic performance of student athletes, especially student athletes receiving football and basketball scholarships, has been a source of great concern in recent years;

"(5) more than 10,000 athletic scholarships are provided annually by institutions of higher education;

"(6) prospective students and prospective student athletes should be aware of the educational commitments of an institution of higher education; and

"(7) knowledge of graduation rates would help prospective students and prospective student athletes make an informed judgment about the educational benefits available at a given institution of higher education."

Section 202 of Pub.L. 101-542 provided that: "The Congress finds that--

"(1) the reported incidence of crime, particularly violent crime, on some college campuses has steadily risen in recent years;

"(2) although annual 'National Campus Violence Surveys' indicate that roughly 80 percent of campus crimes are committed by a student upon another student and that approximately 95 percent of the campus crimes that are violent are alcohol- or drug-related, there are currently no comprehensive data on campus crimes;

"(3) out of 8,000 postsecondary institutions participating in Federal student aid programs, only 352 colleges and universities voluntarily provide crime statistics directly through the Uniform Crime Report of the Federal Bureau of Investigation, and other institutions report data indirectly, through local police agencies or States, in a manner that does not permit campus statistics to be separated;

"(4) several State legislatures have adopted or are considering legislation to require reporting of campus crime statistics and dissemination of security practices and procedures, but the bills are not uniform in their requirements and standards;

"(5) students and employees of institutions of higher education should be aware of the incidence of crime on campus and policies and procedures to prevent crime or to report occurrences of crime;

"(6) applicants for enrollment at a college or university, and their parents, should have access to information about the crime statistics of that institution and its security policies and procedures; and

"(7) while many institutions have established crime preventive measures to increase the safety of campuses, there is a clear need--

"(A) to encourage the development on all campuses of security policies and procedures;

"(B) for uniformity and consistency in the reporting of crimes on campus; and

"(C) to encourage the development of policies and procedures to address sexual assaults and racial violence on college campuses."

CROSS REFERENCES

Crime victims' rights, rights afforded and best efforts to accord rights, procedures to promote compliance, see 18 USCA § 3771.
Grants to institutions of higher education and model programs and strategies, see 20 USCA § 7132.

CODE OF FEDERAL REGULATIONS

Student assistance generally, see 34 CFR § 668.1 et seq.

LAW REVIEW COMMENTARIES

When ignorance is not bliss: In search of racial and gender equity in intercollegiate athletics. Rodney K. Smith, 61 Mo.L.Rev. 329 (1996).

NOTES OF DECISIONS

Campus crime 2
Regulations 1

1. Regulations

Secretary of Education exceeded his authority in promulgating amendments to tuition refund regulations under Higher Education Act (HEA) which required educational institutions to refund to Department of Education funds required to be paid out-of-pocket by students withdrawing from programs for which they were also receiving financial support under HEA, but which funds students had not yet paid at time of their withdrawal; express language of enabling statute permitted institutions to retain such funds, and regulatory language characterized as ambiguous by Secretary merely established distribution mechanism for refund calculated elsewhere in regulations and stated that refund policy was determined elsewhere in regulations. California Cosmetology Coalition v. Riley, C.A.9 (Cal.) 1997, 110 F.3d 1454. Colleges And Universities ⚿ 9.20(1)

2. Campus crime

University counsel reasonably believed location of student's assault on another student brought incident within university's duty under Clery Act provision requiring universities accepting federal funding to make reports to campus community on certain crimes considered to be a threat to students and employees, and thus, university's issuance of crime alert was covered by qualified privilege under Rhode Island law from liability for defamation based on reasonable belief that publisher had legal duty to speak out; there was no showing university thought incident occurred outside Act's geographic purview, and while counsel stated she was not concerned with specific address of incident, she considered its location and concluded it had taken place in vicinity of campus and in area frequented by students. Havlik v. Johnson & Wales University, C.A.1 (R.I.) 2007, 509 F.3d 25. Libel And Slander ⚿ 43

Victim of assault by fellow university student suffered severe or aggravated bodily injury, and thus, the assault was an aggravated assault, within meaning of Clery Act provision requiring universities participating in federal student financial assistance programs to make timely reports to campus community on aggravated assaults committed on public property that were considered a threat to students and employees, and thus, university had legal duty to issue crime alert regarding assault, for purposes of qualified privilege under Rhode Island law from liability for defamation based on good faith, correct or reasonable belief that publisher of statement had legal duty to speak out; although incident was labeled by police as a simple assault, victim suffered a concussion and skull fracture. Havlik v. Johnson & Wales University, D.R.I.2007, 490 F.Supp.2d 250, affirmed 509 F.3d 25. Colleges And Universities ⚿ 5; Libel And Slander ⚿ 43

20 U.S.C.A. § 1092, 20 USCA § 1092
Current through P.L. 110-449 approved 11-21-08

END OF DOCUMENT

Effective: January 8, 2002

United States Code Annotated Currentness
Title 20. Education
Chapter 31. General Provisions Concerning Education (Refs & Annos)
Subchapter III. General Requirements and Conditions Concerning Operation and Administration of Education Programs: General Authority of Secretary (Refs & Annos)
Part 4. Records; Privacy; Limitation on Withholding Federal Funds
§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(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 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. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations--

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(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.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include--

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) (i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted--

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if--

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student. [FN1]

(F) 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, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless--

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided,* That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party 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. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6)(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of Title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of Title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding--

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7)(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 of Title 42 concerning registered sex offenders who are required to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(c) Surveys or data-gathering activities; regulations

Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or

identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Disciplinary records; disclosure

Nothing in this section shall prohibit an educational agency or institution from--

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures

(1) In general

(1) In general

Nothing in this Act or the Higher Education Act of 1965 [20 U.S.C.A. § 1001 et seq.] shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if--

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) State law regarding disclosure

(2) State law regarding disclosure

Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a) of this section.

(j) Investigation and prosecution of terrorism

(1) In general

(1) In general

Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to--

(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of Title 18, or an act of domestic or international terrorism as defined in section 2331 of that title; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval

(A) In general

(A) In general

An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(2) Application and approval

(A) In general

(A) In general

An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection of educational agency or institution

(3) Protection of educational agency or institution

An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

(4) Record-keeping

(4) Record-keeping

Subsection (b)(4) of this section does not apply to education records subject to a court order under this subsection.

CREDIT(S)

(Pub.L. 90-247, Title IV, § 444, formerly § 438, as added Pub.L. 93-380, Title V, § 513(a), Aug. 21, 1974, 88 Stat. 571, and amended Pub.L. 93-568, § 2(a), Dec. 31, 1974, 88 Stat. 1858; Pub.L. 96-46, § 4(c), Aug. 6, 1979, 93 Stat. 342; Pub.L. 96-88, Title III, § 301, Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 101-542, Title II, § 203, Nov. 8, 1990, 104 Stat. 2385; Pub.L. 102-325, Title XV, § 1555(a), July 23, 1992, 106 Stat. 840; renumbered § 444 and amended Pub.L. 103-382, Title II, §§ 212(b)(1), 249, 261(h), Oct. 20, 1994, 108 Stat. 3913, 3924, 3928; Pub.L. 105-244, Title IX, §§ 951, 952, Oct. 7, 1998, 112 Stat. 1835, 1836; Pub.L. 106-386, Div. B, Title VI, § 1601(d), Oct. 28, 2000, 114 Stat. 1538; Pub.L. 107-56, Title V, § 507, Oct. 26, 2001, 115 Stat. 367; Pub.L. 107-110, Title X, § 1062(3), Jan. 8, 2002, 115 Stat. 2088.)

[FN1] So in original. The period probably should be a comma.

Current through P.L. 110-120 (excluding P.L. 110-114 and 110-116) approved 11-19-07

END OF DOCUMENT

Code of Federal Regulations Currentness
Title 34. Education
Subtitle A. Office of the Secretary, Department of Education
→ Part 99. Family Educational Rights and Privacy (Refs & Annos)
Subpart A. General

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in § 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if--

(1) The educational institution provides educational services or instruction, or both, to students; or

(2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section--

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

Act means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

Attendance includes, but is not limited to:

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

Dates of attendance.

(a) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

(b) The term does not include specific daily records of a student's attendance at an educational agency or institution.

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to,

the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

Educational agency or institution means any public or private agency or institution to which this part applies under § 99.1(a).

Education records.

(a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

Eligible student means a student who has reached 18 years of age or is attending an institution of postsecondary education.

Institution of postsecondary education means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a

parent in the absence of a parent or a guardian.

Party means an individual, agency, institution, or organization.

Personally identifiable information includes, but is not limited to:

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

Record means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

Secretary means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

Student, except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

§ 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) An individual who is or has been a student at an educational institution and who applies for admission at another component of that institution does not have rights under this part with respect to records maintained by that other component, including records maintained in connection with the student's application for admission, unless the student is accepted and attends that other component of the institution.

§ 99.6 [Reserved]

§ 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to--

(i) Inspect and review the student's education records;

(ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

(iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and § 99.31 authorize disclosure without consent; and

(iv) File with the Department a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to

comply with the requirements of the Act and this part.

(3) The notice must include all of the following:

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for requesting amendment of records under § 99.20.

(iii) If the educational agency or institution has a policy of disclosing education records under § 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

§ 99.8 What provisions apply to records of a law enforcement unit?

(a)(1) Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to--

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are--

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean--

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of § 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

Subpart B. What Are The Rights of Inspection and Review of Education Records?

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to--

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

(c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records.

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall--

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

(e) The educational agency or institution, or SEA or its component shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of Education records in § 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

§ 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are:

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if:

(i) The student has waived his or her right to inspect and review those letters and statements;

and

(ii) Those letters and statements are related to the student's:

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if:

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall:

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

Subpart C. What Are The Procedures for Amending Education Records?

§ 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.

§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall:

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

§ 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by § 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Subpart D. May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

§ 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in § 99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(d) "Signed and dated written consent" under this part may include a record and signature in electronic form that--

(1) Identifies and authenticates a particular person as the source of the electronic consent; and

(2) Indicates such person's approval of the information contained in the electronic consent.

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or

institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of § 99.35, to authorized representatives of--

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, financial aid means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically--

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of § 99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term organization includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations

to carry out their accrediting functions.

(8) The disclosure is to parents, as defined in § 99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with--

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii)(A) If an educational agency or institution initiates legal action against a parent or student, the educational agency or institution may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the educational agency or institution to proceed with the legal action as plaintiff.

(B) If a parent or eligible student initiates legal action against an educational agency or institution, the educational agency or institution may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the educational agency or institution to defend itself.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in § 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in § 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure, subject to the requirements in § 99.39, is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense. The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.

(14)(i) The disclosure, subject to the requirements in § 99.39, is in connection with a disciplinary proceeding at an institution of postsecondary education. The institution must not disclose the final results of the disciplinary proceeding unless it determines that--

(A) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(B) With respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

(ii) The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student.

(iii) This section applies only to disciplinary proceedings in which the final results were reached on or after October 7, 1998.

(15)(i) The disclosure is to a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of

alcohol or a controlled substance if--

(A) The institution determines that the student has committed a disciplinary violation with respect to that use or possession; and

(B) The student is under the age of 21 at the time of the disclosure to the parent.

(ii) Paragraph (a)(15) of this section does not supersede any provision of State law that prohibits an institution of postsecondary education from disclosing information.

(b) Paragraph (a) of this section does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11), (13), (14), and (15) of this section.

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under § 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in § 99.31(a)(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under § 99.31(a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

§ 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without

the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of § 99.31; and

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made to parents of dependent students under § 99.31(a)(8), to disclosures made pursuant to court orders, lawfully issued subpoenas, or litigation under § 99.31(a)(9), to disclosures of directory information under § 99.31(a)(11), to disclosures made to a parent or student under § 99.31(a)(12), to disclosures made in connection with a disciplinary proceeding under § 99.31(a)(14), or to disclosures made to parents under § 99.31(a)(15).

(d) Except for disclosures under § 99.31(a)(9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of § 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under § 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of

this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from--

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

§ 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

§ 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

§ 99.39 What definitions apply to the nonconsensual disclosure of records by

postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses?

As used in this part:

Alleged perpetrator of a crime of violence is a student who is alleged to have committed acts that would, if proven, constitute any of the following offenses or attempts to commit the following offenses that are defined in appendix A to this part:

Arson

Assault offenses

Burglary

Criminal homicide--manslaughter by negligence

Criminal homicide--murder and nonnegligent manslaughter

Destruction/damage/vandalism of property

Kidnapping/abduction

Robbery

Forcible sex offenses.

Alleged perpetrator of a nonforcible sex offense means a student who is alleged to have committed acts that, if proven, would constitute statutory rape or incest. These offenses are defined in appendix A to this part.

Final results means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within the institution. The disclosure of final results must include only the name of the student, the violation committed, and any sanction imposed by the institution against the student.

Sanction imposed means a description of the disciplinary action taken by the institution, the date of its imposition, and its duration.

Violation committed means the institutional rules or code sections that were violated and any essential findings supporting the institution's conclusion that the violation was committed.

Subpart E. What Are The Enforcement Procedures?

§ 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to:

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term applicable program is defined in section 400 of the General Education Provisions Act.

§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

§ 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-4605.

§ 99.64 What is the complaint procedure?

(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office may extend the time limit in this section for good cause shown.

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under § 99.64(b). The notice to the educational agency or institution--

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 99.64.

§ 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

§ 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under § 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act--

(1) Withhold further payments under any applicable program;

(2) Issue a compliant to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under § 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

Appendix A to Part 99--Crimes of Violence Definitions

Arson

Any willful or malicious burning or attempt to burn,

with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Assault Offenses

An unlawful attack by one person upon another.

(a) Aggravated Assault. An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious injury if the crime were successfully completed.)

(b) Simple Assault. An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

(c) Intimidation. To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words or other conduct, or both, but without displaying a weapon or subjecting the victim to actual physical attack.

Burglary

The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Criminal Homicide--Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide--Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

Kidnapping/Abduction

The unlawful seizure, transportation, or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parent(s) or legal guardian.

Robbery

The taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear.

Sex Offenses, Forcible

Any sexual act directed against another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent.

(a) Forcible Rape (Except "Statutory Rape"). The carnal knowledge of a person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity (or because of his or her youth).

(b) Forcible Sodomy. Oral or anal sexual intercourse with another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(c) Sexual Assault With An Object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(d) Forcible Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Nonforcible Sex Offenses (Except "Prostitution Offenses")

Unlawful, nonforcible sexual intercourse.

(a) Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(b) Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Current through November 15, 2007; 72 FR 64430
END OF DOCUMENT

C

Effective: July 1, 2008

Code of Federal Regulations Currentness
Title 34. Education
Subtitle B. Regulations of the Offices of the Department of Education
Chapter VI. Office of Postsecondary Education, Department of Education
Part 668. Student Assistance General Provisions (Refs & Annos)
Subpart A. General (Refs & Annos)

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution's participation in any Title IV, HEA program, the applicable rules in this part also apply to that servicer. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance with the rules in this part.

(b) As used in this part, an "institution" includes--

(1) An institution of higher education as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education as defined in 34 CFR 600.5; and

(3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include--

(1) The Federal Pell Grant Program (20 U.S.C. 1070a et seq.; 34 CFR part 690);

(2) The Academic Competitiveness Grant (ACG) Program (20 U.S.C. 1070a-1; 34 CFR part 691);

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b et seq.; 34 CFR parts 673 and 676);

(4) The Leveraging Educational Assistance Partnership (LEAP) Program (20 U.S.C. 1070c et seq.; 34 CFR part 692);

(5) The Federal Stafford Loan Program (20 U.S.C. 1071 et seq.; 34 CFR part 682);

(6) The Federal PLUS Program (20 U.S.C. 1078-2; 34 CFR part 682);

(7) The Federal Consolidation Loan Program (20 U.S.C. 1078-3; 34 CFR part 682);

(8) The Federal Work-Study (FWS) Program (42 U.S.C. 2751 et seq.; 34 CFR parts 673 and 675);

(9) The William D. Ford Federal Direct Loan (Direct Loan) Program (20 U.S.C. 1087a et seq.; 34 CFR part 685);

(10) The Federal Perkins Loan Program (20 U.S.C. 1087aa et seq.; 34 CFR parts 673 and 674);

(11) The National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program (20 U.S.C. 1070a-1; 34 CFR part 691); and

(12) The Teacher Education Assistance for College and Higher Education (TEACH) Grant program.

(Authority: 20 U.S.C. 1070 et seq.)

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July 3, 2006; 73 FR 35492, June 23, 2008]

SOURCE: 51 FR 41921, Nov. 19, 1986, unless otherwise noted.; 45 FR 86855, Dec. 31, 1980; 50 FR 26953, June 28, 1985; 51 FR 8948, March 14, 1986; 51 FR 29398, Aug. 15, 1986; 56 FR 61337, Dec. 2, 1991; 59 FR 21866, April 26, 1994; 59 FR 22318, 22418, April 29, 1994; 60 FR 61433, Nov. 29, 1995; 64 FR 57358, Oct. 22, 1999; 64 FR 58617, Oct. 29, 1999; 64 FR 59037, 59066, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 65 FR 65637, 65674, Nov. 1, 2000; 68 FR 66615, Nov. 26, 2003; 73 FR 35492, June 23, 2008, unless otherwise noted.

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34 C. F. R. § 668.1, 34 CFR § 668.1

Current through December 18, 2008; 73 FR 77472

As of Date/Time: 29-Dec-08 10:21:36

College	Year	Award Type	Award Desc	Headcount	Total Amount
Alameda	2001-2002	GB	Cal Grant B	168	225358
Alameda	2001-2002	GC	Cal Grant C	22	12096
Alameda	2001-2002	GE	EOPS Grant	217	29050
Alameda	2001-2002	GF	CARE Grant	47	29815
Alameda	2001-2002	GP	Pell Grant	823	2024511
Alameda	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	298	200490
Alameda	2001-2002	LH	Stafford Loan, unsubsidized	13	28006
Alameda	2001-2002	WC	California State Work Study (SWS)	27	51991
Alameda	2001-2002	WF	Federal Work Study (FWS) (Federal share)	84	141932
Allan Hancock	2001-2002	GB	Cal Grant B	274	344213
Allan Hancock	2001-2002	GC	Cal Grant C	48	18972
Allan Hancock	2001-2002	GE	EOPS Grant	508	210679
Allan Hancock	2001-2002	GP	Pell Grant	1498	3280238
Allan Hancock	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	402	166493
Allan Hancock	2001-2002	GU	Other grant: institutional source	57	6470
Allan Hancock	2001-2002	GV	Other grant: non-institutional source	1	500
Allan Hancock	2001-2002	LG	Stafford Loan, subsidized	84	279455
Allan Hancock	2001-2002	LN	Other loan: non-institutional source	13	7315
Allan Hancock	2001-2002	WF	Federal Work Study (FWS) (Federal share)	154	165837
Allan Hancock	2001-2002	WU	Other Work Study and matching funds	154	55285
American River	2001-2002	GB	Cal Grant B	606	723313
American River	2001-2002	GC	Cal Grant C	123	58132
American River	2001-2002	GF	CARE Grant	152	101962
American River	2001-2002	GP	Pell Grant	4582	10327083
American River	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	1169	583035
Antelope Valley	2001-2002	GB	Cal Grant B	252	286359
Antelope Valley	2001-2002	GC	Cal Grant C	78	31297
Antelope Valley	2001-2002	GP	Pell Grant	2387	4465856
Antelope Valley	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	479	229709
Antelope Valley	2001-2002	LG	Stafford Loan, subsidized	481	996299
Antelope Valley	2001-2002	LH	Stafford Loan, unsubsidized	175	318044
Bakersfield	2001-2002	GB	Cal Grant B	900	1084805
Bakersfield	2001-2002	GC	Cal Grant C	67	30240
Bakersfield	2001-2002	GF	CARE Grant	40	66158
Bakersfield	2001-2002	GP	Pell Grant	3884	8280159

Bakersfield	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	851	280037
Barstow	2001-2002	GB	Cal Grant B	37	48002
Barstow	2001-2002	GC	Cal Grant C	8	3060
Barstow	2001-2002	GE	EOPS Grant	93	19065
Barstow	2001-2002	GF	CARE Grant	27	21244
Barstow	2001-2002	GP	Pell Grant	763	1625286
Barstow	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	155	49050
Barstow	2001-2002	WF	Federal Work Study (FWS) (Federal share)	36	75389
Berkeley City	2001-2002	GB	Cal Grant B	40	49801
Berkeley City	2001-2002	GC	Cal Grant C	7	2016
Berkeley City	2001-2002	GE	EOPS Grant	251	64950
Berkeley City	2001-2002	GF	CARE Grant	20	20733
Berkeley City	2001-2002	GP	Pell Grant	886	1634706
Berkeley City	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	394	96211
Berkeley City	2001-2002	LG	Stafford Loan, subsidized	97	225189
Berkeley City	2001-2002	LH	Stafford Loan, unsubsidized	58	181957
Berkeley City	2001-2002	WC	California State Work Study (SWS)	14	48472
Berkeley City	2001-2002	WF	Federal Work Study (FWS) (Federal share)	52	84245
Butte	2001-2002	GB	Cal Grant B	400	499983
Butte	2001-2002	GC	Cal Grant C	139	59184
Butte	2001-2002	GE	EOPS Grant	953	277566
Butte	2001-2002	GF	CARE Grant	55	66240
Butte	2001-2002	GP	Pell Grant	3359	7764650
Butte	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	515	285467
Butte	2001-2002	GV	Other grant: non-institutional source	97	116654
Butte	2001-2002	LG	Stafford Loan, subsidized	1090	2885332
Butte	2001-2002	LH	Stafford Loan, unsubsidized	345	911151
Butte	2001-2002	LN	Other loan: non-institutional source	8	28137
Butte	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	7	34706
Butte	2001-2002	WC	California State Work Study (SWS)	59	218651
Butte	2001-2002	WF	Federal Work Study (FWS) (Federal share)	130	242983
Cabrillo	2001-2002	GB	Cal Grant B	297	359108
Cabrillo	2001-2002	GC	Cal Grant C	70	28224
Cabrillo	2001-2002	GE	EOPS Grant	319	152668
Cabrillo	2001-2002	GF	CARE Grant	87	74743
Cabrillo	2001-2002	GP	Pell Grant	1534	3200135
Cabrillo	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	470	139600

Cabrillo	2001-2002	GU	Other grant: institutional source	3	1871
Cabrillo	2001-2002	GV	Other grant: non-institutional source	92	107232
Cabrillo	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	2	5000
Cabrillo	2001-2002	LG	Stafford Loan, subsidized	263	694375
Cabrillo	2001-2002	LH	Stafford Loan, unsubsidized	125	345626
Cabrillo	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	7	40073
Cabrillo	2001-2002	WF	Federal Work Study (FWS) (Federal share)	92	144651
Cabrillo	2001-2002	WU	Other Work Study and matching funds	19	40973
Canada	2001-2002	GB	Cal Grant B	21	25204
Canada	2001-2002	GC	Cal Grant C	7	3204
Canada	2001-2002	GE	EOPS Grant	2	1100
Canada	2001-2002	GF	CARE Grant	6	12850
Canada	2001-2002	GP	Pell Grant	301	633821
Canada	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	137	65401
Canada	2001-2002	LD	Perkins Loan	14	8300
Canada	2001-2002	WF	Federal Work Study (FWS) (Federal share)	29	102267
Canyons	2001-2002	GB	Cal Grant B	145	181556
Canyons	2001-2002	GC	Cal Grant C	32	13320
Canyons	2001-2002	GE	EOPS Grant	394	98358
Canyons	2001-2002	GF	CARE Grant	32	37984
Canyons	2001-2002	GP	Pell Grant	831	1917750
Canyons	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	124	96314
Canyons	2001-2002	GU	Other grant: institutional source	23	6328
Canyons	2001-2002	LG	Stafford Loan, subsidized	233	560103
Canyons	2001-2002	LH	Stafford Loan, unsubsidized	122	341240
Canyons	2001-2002	LI	Other loan: institutional source	2	14713
Canyons	2001-2002	WF	Federal Work Study (FWS) (Federal share)	60	95393
Cerritos	2001-2002	GB	Cal Grant B	967	1132846
Cerritos	2001-2002	GC	Cal Grant C	124	44640
Cerritos	2001-2002	GE	EOPS Grant	953	168597
Cerritos	2001-2002	GF	CARE Grant	77	28936
Cerritos	2001-2002	GP	Pell Grant	5467	11817062
Cerritos	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	2500	1134560
Cerritos	2001-2002	GU	Other grant: institutional source	949	145644
Cerritos	2001-2002	GV	Other grant: non-institutional source	106	292602
Cerritos	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	4	12446
Cerritos	2001-2002	LG	Stafford Loan, subsidized	478	1298699

Cerritos	2001-2002	LH	Stafford Loan, unsubsidized	110	346361
Cerritos	2001-2002	WC	California State Work Study (SWS)	23	55331
Cerritos	2001-2002	WF	Federal Work Study (FWS) (Federal share)	228	926723
Cerritos	2001-2002	WU	Other Work Study and matching funds	20	58429
Cerro Coso	2001-2002	GB	Cal Grant B	81	94939
Cerro Coso	2001-2002	GC	Cal Grant C	24	11520
Cerro Coso	2001-2002	GF	CARE Grant	130	68762
Cerro Coso	2001-2002	GP	Pell Grant	1118	2422394
Cerro Coso	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	167	57426
Cerro Coso	2001-2002	GV	Other grant: non-institutional source	64	25600
Chabot Hayward	2001-2002	GB	Cal Grant B	281	346411
Chabot Hayward	2001-2002	GC	Cal Grant C	39	15750
Chabot Hayward	2001-2002	GE	EOPS Grant	363	102314
Chabot Hayward	2001-2002	GF	CARE Grant	41	53891
Chabot Hayward	2001-2002	GP	Pell Grant	1963	4201230
Chabot Hayward	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	973	199129
Chabot Hayward	2001-2002	LG	Stafford Loan, subsidized	116	325784
Chabot Hayward	2001-2002	LH	Stafford Loan, unsubsidized	40	136493
Chabot Hayward	2001-2002	WC	California State Work Study (SWS)	5	7066
Chabot Hayward	2001-2002	WF	Federal Work Study (FWS) (Federal share)	88	174374
Chaffey	2001-2002	GB	Cal Grant B	140	169245
Chaffey	2001-2002	GC	Cal Grant C	45	20160
Chaffey	2001-2002	GE	EOPS Grant	23	8588
Chaffey	2001-2002	GP	Pell Grant	2214	4381575
Chaffey	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	607	230617
Chaffey	2001-2002	LG	Stafford Loan, subsidized	267	619662
Chaffey	2001-2002	LH	Stafford Loan, unsubsidized	49	119481
Chaffey	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	1	2650
Chaffey	2001-2002	WF	Federal Work Study (FWS) (Federal share)	154	308300
Citrus	2001-2002	GB	Cal Grant B	265	329576
Citrus	2001-2002	GC	Cal Grant C	44	17678
Citrus	2001-2002	GP	Pell Grant	1833	3808072
Citrus	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	464	159325
Citrus	2001-2002	LL	Federal Direct Student Loan - unsubsidized	153	451869
Citrus	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	14	40280
Citrus	2001-2002	LS	Federal Direct Student Loan - subsidized	231	611656
Citrus	2001-2002	WC	California State Work Study (SWS)	25	46112

Citrus	2001-2002	WF	Federal Work Study (FWS) (Federal share)	80	189663
Coastline	2001-2002	GB	Cal Grant B	35	43815
Coastline	2001-2002	GC	Cal Grant C	8	2952
Coastline	2001-2002	GE	EOPS Grant	143	17140
Coastline	2001-2002	GP	Pell Grant	391	882685
Coastline	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	328	235264
Coastline	2001-2002	LD	Perkins Loan	46	114459
Coastline	2001-2002	LG	Stafford Loan, subsidized	88	243393
Coastline	2001-2002	LH	Stafford Loan, unsubsidized	26	89117
Coastline	2001-2002	WF	Federal Work Study (FWS) (Federal share)	12	39625
Columbia	2001-2002	GB	Cal Grant B	67	84536
Columbia	2001-2002	GC	Cal Grant C	32	13680
Columbia	2001-2002	GE	EOPS Grant	200	43603
Columbia	2001-2002	GP	Pell Grant	507	1048609
Columbia	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	262	68430
Columbia	2001-2002	LD	Perkins Loan	9	12500
Columbia	2001-2002	WE	EOPS Work Study	1	326
Columbia	2001-2002	WF	Federal Work Study (FWS) (Federal share)	46	51031
Columbia	2001-2002	WU	Other Work Study and matching funds	46	17010
Compton	2001-2002	GB	Cal Grant B	216	300874
Compton	2001-2002	GC	Cal Grant C	42	21672
Compton	2001-2002	GE	EOPS Grant	2836	793400
Compton	2001-2002	GF	CARE Grant	628	535293
Compton	2001-2002	GP	Pell Grant	1706	3871236
Compton	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	629	299000
Compton	2001-2002	LD	Perkins Loan	40	28429
Compton	2001-2002	LG	Stafford Loan, subsidized	14	40094
Compton	2001-2002	WF	Federal Work Study (FWS) (Federal share)	262	574569
Contra Costa	2001-2002	GB	Cal Grant B	122	155397
Contra Costa	2001-2002	GC	Cal Grant C	29	10224
Contra Costa	2001-2002	GF	CARE Grant	81	112515
Contra Costa	2001-2002	GP	Pell Grant	940	1986088
Contra Costa	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	211	178322
Contra Costa	2001-2002	LG	Stafford Loan, subsidized	48	152600
Contra Costa	2001-2002	LH	Stafford Loan, unsubsidized	2	5400
Contra Costa	2001-2002	WF	Federal Work Study (FWS) (Federal share)	107	250486
Copper Mountain	2001-2002	GB	Cal Grant B	39	48083

Copper Mountain	2001-2002	GC	Cal Grant C	13	6336
Copper Mountain	2001-2002	GE	EOPS Grant	80	35614
Copper Mountain	2001-2002	GF	CARE Grant	6	2320
Copper Mountain	2001-2002	GP	Pell Grant	596	1277220
Copper Mountain	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	59	25875
Copper Mountain	2001-2002	GV	Other grant: non-institutional source	56	22600
Copper Mountain	2001-2002	LG	Stafford Loan, subsidized	166	452039
Copper Mountain	2001-2002	LH	Stafford Loan, unsubsidized	127	385584
Copper Mountain	2001-2002	WF	Federal Work Study (FWS) (Federal share)	13	20311
Cosumnes River	2001-2002	GB	Cal Grant B	337	431489
Cosumnes River	2001-2002	GC	Cal Grant C	35	14688
Cosumnes River	2001-2002	GE	EOPS Grant	513	140529
Cosumnes River	2001-2002	GF	CARE Grant	126	80626
Cosumnes River	2001-2002	GP	Pell Grant	2025	4452957
Cosumnes River	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	868	387100
Cosumnes River	2001-2002	GV	Other grant: non-institutional source	1	1000
Cosumnes River	2001-2002	LG	Stafford Loan, subsidized	42	105255
Cosumnes River	2001-2002	LH	Stafford Loan, unsubsidized	24	71784
Cosumnes River	2001-2002	WF	Federal Work Study (FWS) (Federal share)	7	12027
Crafton Hills	2001-2002	GB	Cal Grant B	99	114444
Crafton Hills	2001-2002	GC	Cal Grant C	7	2664
Crafton Hills	2001-2002	GE	EOPS Grant	320	195398
Crafton Hills	2001-2002	GF	CARE Grant	33	28275
Crafton Hills	2001-2002	GP	Pell Grant	792	1527367
Crafton Hills	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	214	60350
Crafton Hills	2001-2002	LG	Stafford Loan, subsidized	22	47254
Crafton Hills	2001-2002	LH	Stafford Loan, unsubsidized	2	4500
Crafton Hills	2001-2002	WF	Federal Work Study (FWS) (Federal share)	135	320967
Cuesta	2001-2002	GB	Cal Grant B	234	293816
Cuesta	2001-2002	GC	Cal Grant C	44	19056
Cuesta	2001-2002	GE	EOPS Grant	280	84664
Cuesta	2001-2002	GF	CARE Grant	60	32125
Cuesta	2001-2002	GP	Pell Grant	1490	3107504
Cuesta	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	400	227481
Cuesta	2001-2002	GV	Other grant: non-institutional source	15	60216
Cuesta	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	1	1689
Cuesta	2001-2002	LG	Stafford Loan, subsidized	436	986942

Cuesta	2001-2002	LH	Stafford Loan, unsubsidized	82	210237
Cuesta	2001-2002	LN	Other loan: non-institutional source	13	59400
Cuesta	2001-2002	WF	Federal Work Study (FWS) (Federal share)	125	256891
Cuyamaca	2001-2002	GB	Cal Grant B	169	209406
Cuyamaca	2001-2002	GC	Cal Grant C	10	2914
Cuyamaca	2001-2002	GE	EOPS Grant	272	89468
Cuyamaca	2001-2002	GF	CARE Grant	23	40286
Cuyamaca	2001-2002	GP	Pell Grant	897	1899396
Cuyamaca	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	296	73961
Cuyamaca	2001-2002	GV	Other grant: non-institutional source	86	8657
Cuyamaca	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	1	1000
Cuyamaca	2001-2002	LG	Stafford Loan, subsidized	83	167843
Cuyamaca	2001-2002	LH	Stafford Loan, unsubsidized	7	12015
Cuyamaca	2001-2002	WE	EOPS Work Study	27	34269
Cuyamaca	2001-2002	WF	Federal Work Study (FWS) (Federal share)	81	98148
Cuyamaca	2001-2002	WU	Other Work Study and matching funds	96	60084
Cypress	2001-2002	GB	Cal Grant B	350	456276
Cypress	2001-2002	GC	Cal Grant C	68	28872
Cypress	2001-2002	GE	EOPS Grant	306	49076
Cypress	2001-2002	GP	Pell Grant	2654	5955567
Cypress	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	365	365250
Cypress	2001-2002	LG	Stafford Loan, subsidized	563	1356595
Cypress	2001-2002	LH	Stafford Loan, unsubsidized	348	1063534
Cypress	2001-2002	WF	Federal Work Study (FWS) (Federal share)	105	194589
Deanza	2001-2002	GB	Cal Grant B	477	613632
Deanza	2001-2002	GC	Cal Grant C	24	9444
Deanza	2001-2002	GE	EOPS Grant	255	111200
Deanza	2001-2002	GF	CARE Grant	29	21600
Deanza	2001-2002	GP	Pell Grant	1723	3779584
Deanza	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	784	363100
Deanza	2001-2002	GU	Other grant: institutional source	60	11694
Deanza	2001-2002	GV	Other grant: non-institutional source	687	358875
Deanza	2001-2002	LD	Perkins Loan	92	180848
Deanza	2001-2002	LG	Stafford Loan, subsidized	325	812763
Deanza	2001-2002	LH	Stafford Loan, unsubsidized	169	568164
Deanza	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	4	16595
Deanza	2001-2002	WF	Federal Work Study (FWS) (Federal share)	143	141264

Deanza	2001-2002	WU	Other Work Study and matching funds	143	47096
Desert	2001-2002	GB	Cal Grant B	197	248917
Desert	2001-2002	GC	Cal Grant C	25	10512
Desert	2001-2002	GE	EOPS Grant	333	192500
Desert	2001-2002	GF	CARE Grant	42	20560
Desert	2001-2002	GP	Pell Grant	1557	3274481
Desert	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	344	158531
Desert	2001-2002	GU	Other grant: institutional source	16	8000
Desert	2001-2002	GV	Other grant: non-institutional source	50	164881
Desert	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	7	13950
Desert	2001-2002	LG	Stafford Loan, subsidized	286	766852
Desert	2001-2002	LH	Stafford Loan, unsubsidized	154	439290
Desert	2001-2002	WF	Federal Work Study (FWS) (Federal share)	128	157398
Desert	2001-2002	WU	Other Work Study and matching funds	8	10443
Diablo Valley	2001-2002	GB	Cal Grant B	159	202934
Diablo Valley	2001-2002	GC	Cal Grant C	24	8784
Diablo Valley	2001-2002	GE	EOPS Grant	276	96198
Diablo Valley	2001-2002	GF	CARE Grant	27	29762
Diablo Valley	2001-2002	GP	Pell Grant	1107	2433324
Diablo Valley	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	163	129400
Diablo Valley	2001-2002	LG	Stafford Loan, subsidized	142	350832
Diablo Valley	2001-2002	LH	Stafford Loan, unsubsidized	36	94300
Diablo Valley	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	1	4000
Diablo Valley	2001-2002	WF	Federal Work Study (FWS) (Federal share)	39	78414
East LA	2001-2002	GB	Cal Grant B	678	854467
East LA	2001-2002	GC	Cal Grant C	29	11934
East LA	2001-2002	GP	Pell Grant	3683	8603622
East LA	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	846	300400
East LA	2001-2002	LD	Perkins Loan	39	80000
East LA	2001-2002	LG	Stafford Loan, subsidized	112	269161
East LA	2001-2002	LH	Stafford Loan, unsubsidized	35	122675
East LA	2001-2002	WF	Federal Work Study (FWS) (Federal share)	206	324011
El Camino	2001-2002	GB	Cal Grant B	508	624606
El Camino	2001-2002	GC	Cal Grant C	46	18720
El Camino	2001-2002	GE	EOPS Grant	837	563552
El Camino	2001-2002	GF	CARE Grant	186	202164
El Camino	2001-2002	GP	Pell Grant	2537	5686844

El Camino	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	907	476552
El Camino	2001-2002	LG	Stafford Loan, subsidized	205	543870
El Camino	2001-2002	LH	Stafford Loan, unsubsidized	78	217194
El Camino	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	1	7807
El Camino	2001-2002	WF	Federal Work Study (FWS) (Federal share)	291	481249
Evergreen Valley	2001-2002	GB	Cal Grant B	243	321453
Evergreen Valley	2001-2002	GC	Cal Grant C	14	5832
Evergreen Valley	2001-2002	GE	EOPS Grant	741	278686
Evergreen Valley	2001-2002	GF	CARE Grant	7	20926
Evergreen Valley	2001-2002	GP	Pell Grant	1373	3128912
Evergreen Valley	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	694	238339
Evergreen Valley	2001-2002	GU	Other grant: institutional source	25	16650
Evergreen Valley	2001-2002	LL	Federal Direct Student Loan - unsubsidized	16	51595
Evergreen Valley	2001-2002	LS	Federal Direct Student Loan - subsidized	34	85421
Evergreen Valley	2001-2002	WE	EOPS Work Study	12	14901
Evergreen Valley	2001-2002	WF	Federal Work Study (FWS) (Federal share)	101	227941
Feather River	2001-2002	GB	Cal Grant B	21	25011
Feather River	2001-2002	GC	Cal Grant C	7	3672
Feather River	2001-2002	GF	CARE Grant	17	8800
Feather River	2001-2002	GP	Pell Grant	191	407080
Feather River	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	124	20157
Feather River	2001-2002	GV	Other grant: non-institutional source	27	3545
Feather River	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	6	18678
Feather River	2001-2002	LG	Stafford Loan, subsidized	52	119155
Feather River	2001-2002	LH	Stafford Loan, unsubsidized	23	41671
Feather River	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	3	24190
Feather River	2001-2002	WE	EOPS Work Study	8	7157
Feather River	2001-2002	WF	Federal Work Study (FWS) (Federal share)	28	24764
Foothill	2001-2002	GB	Cal Grant B	58	77296
Foothill	2001-2002	GC	Cal Grant C	16	5952
Foothill	2001-2002	GE	EOPS Grant	68	34000
Foothill	2001-2002	GF	CARE Grant	2	600
Foothill	2001-2002	GP	Pell Grant	414	843861
Foothill	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	225	106416
Foothill	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	1	2699
Foothill	2001-2002	LD	Perkins Loan	45	58800
Foothill	2001-2002	LG	Stafford Loan, subsidized	172	691728

Foothill	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	2	10000
Foothill	2001-2002	WF	Federal Work Study (FWS) (Federal share)	65	91140
Foothill	2001-2002	WU	Other Work Study and matching funds	65	30384
Fresno City	2001-2002	GB	Cal Grant B	1761	2146343
Fresno City	2001-2002	GC	Cal Grant C	126	53820
Fresno City	2001-2002	GE	EOPS Grant	606	372263
Fresno City	2001-2002	GF	CARE Grant	123	91144
Fresno City	2001-2002	GP	Pell Grant	8230	17300132
Fresno City	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	1392	726464
Fresno City	2001-2002	GV	Other grant: non-institutional source	3	6725
Fresno City	2001-2002	LL	Federal Direct Student Loan - unsubsidized	43	67857
Fresno City	2001-2002	LS	Federal Direct Student Loan - subsidized	607	1283959
Fresno City	2001-2002	WC	California State Work Study (SWS)	2	1586
Fresno City	2001-2002	WF	Federal Work Study (FWS) (Federal share)	447	881903
Fullerton	2001-2002	GB	Cal Grant B	252	327964
Fullerton	2001-2002	GC	Cal Grant C	33	15112
Fullerton	2001-2002	GE	EOPS Grant	1124	403831
Fullerton	2001-2002	GF	CARE Grant	92	77005
Fullerton	2001-2002	GP	Pell Grant	2594	5960819
Fullerton	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	917	447355
Fullerton	2001-2002	GV	Other grant: non-institutional source	15	2375
Fullerton	2001-2002	LL	Federal Direct Student Loan - unsubsidized	319	889320
Fullerton	2001-2002	LS	Federal Direct Student Loan - subsidized	539	1183440
Fullerton	2001-2002	WF	Federal Work Study (FWS) (Federal share)	136	337748
Gavilan	2001-2002	GB	Cal Grant B	62	82435
Gavilan	2001-2002	GC	Cal Grant C	3	1440
Gavilan	2001-2002	GE	EOPS Grant	209	49944
Gavilan	2001-2002	GF	CARE Grant	16	4820
Gavilan	2001-2002	GP	Pell Grant	510	1211663
Gavilan	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	189	37500
Gavilan	2001-2002	WF	Federal Work Study (FWS) (Federal share)	38	66768
Gavilan	2001-2002	WU	Other Work Study and matching funds	7	15919
Glendale	2001-2002	GB	Cal Grant B	653	834873
Glendale	2001-2002	GC	Cal Grant C	113	44820
Glendale	2001-2002	GE	EOPS Grant	744	429095
Glendale	2001-2002	GP	Pell Grant	4474	9927488
Glendale	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	1391	451558

Glendale	2001-2002	GV	Other grant: non-institutional source	3	13700
Glendale	2001-2002	LG	Stafford Loan, subsidized	178	442900
Glendale	2001-2002	LH	Stafford Loan, unsubsidized	90	228331
Glendale	2001-2002	LN	Other loan: non-institutional source	36	79469
Glendale	2001-2002	LS	Federal Direct Student Loan - subsidized	187	81075
Glendale	2001-2002	WE	EOPS Work Study	5	461
Glendale	2001-2002	WF	Federal Work Study (FWS) (Federal share)	537	455016
Glendale	2001-2002	WU	Other Work Study and matching funds	456	146782
Golden West	2001-2002	GB	Cal Grant B	376	531906
Golden West	2001-2002	GC	Cal Grant C	45	20808
Golden West	2001-2002	GE	EOPS Grant	1007	215400
Golden West	2001-2002	GP	Pell Grant	2048	5073306
Golden West	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	718	318506
Golden West	2001-2002	LD	Perkins Loan	92	172491
Golden West	2001-2002	LG	Stafford Loan, subsidized	573	1306986
Golden West	2001-2002	LH	Stafford Loan, unsubsidized	118	297640
Golden West	2001-2002	WF	Federal Work Study (FWS) (Federal share)	100	281345
Grossmont	2001-2002	GB	Cal Grant B	503	546749
Grossmont	2001-2002	GC	Cal Grant C	61	27242
Grossmont	2001-2002	GE	EOPS Grant	1073	515598
Grossmont	2001-2002	GF	CARE Grant	86	46319
Grossmont	2001-2002	GP	Pell Grant	2630	5550017
Grossmont	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	790	317328
Grossmont	2001-2002	GV	Other grant: non-institutional source	272	340752
Grossmont	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	2	5710
Grossmont	2001-2002	LG	Stafford Loan, subsidized	451	888979
Grossmont	2001-2002	LH	Stafford Loan, unsubsidized	96	177173
Grossmont	2001-2002	LN	Other loan: non-institutional source	6	12965
Grossmont	2001-2002	WF	Federal Work Study (FWS) (Federal share)	207	289752
Grossmont	2001-2002	WU	Other Work Study and matching funds	249	251007
Hartnell	2001-2002	GB	Cal Grant B	175	233641
Hartnell	2001-2002	GC	Cal Grant C	27	12024
Hartnell	2001-2002	GE	EOPS Grant	666	174695
Hartnell	2001-2002	GF	CARE Grant	90	43450
Hartnell	2001-2002	GP	Pell Grant	1651	3477440
Hartnell	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	473	94600
Hartnell	2001-2002	LG	Stafford Loan, subsidized	40	93760

Hartnell	2001-2002	WC	California State Work Study (SWS)	9	15800
Hartnell	2001-2002	WF	Federal Work Study (FWS) (Federal share)	81	204449
Imperial	2001-2002	GB	Cal Grant B	154	81852
Imperial	2001-2002	GC	Cal Grant C	17	3960
Imperial	2001-2002	GE	EOPS Grant	874	238600
Imperial	2001-2002	GF	CARE Grant	98	44094
Imperial	2001-2002	GP	Pell Grant	2680	5434723
Imperial	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	1635	399950
Imperial	2001-2002	LI	Other loan: institutional source	23	4020
Imperial	2001-2002	WC	California State Work Study (SWS)	129	129680
Imperial	2001-2002	WE	EOPS Work Study	75	34582
Imperial	2001-2002	WF	Federal Work Study (FWS) (Federal share)	118	85999
Irvine	2001-2002	GB	Cal Grant B	77	100047
Irvine	2001-2002	GC	Cal Grant C	6	2736
Irvine	2001-2002	GF	CARE Grant	33	39100
Irvine	2001-2002	GP	Pell Grant	857	1955137
Irvine	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	75	63923
Irvine	2001-2002	GV	Other grant: non-institutional source	10	20239
Irvine	2001-2002	LE	EOPS loan	12	3458
Irvine	2001-2002	LG	Stafford Loan, subsidized	209	541680
Irvine	2001-2002	LH	Stafford Loan, unsubsidized	118	379014
Irvine	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	2	9400
Irvine	2001-2002	WE	EOPS Work Study	130	206639
Irvine	2001-2002	WF	Federal Work Study (FWS) (Federal share)	61	140929
Irvine	2001-2002	WU	Other Work Study and matching funds	49	121451
LA City	2001-2002	GB	Cal Grant B	319	405929
LA City	2001-2002	GC	Cal Grant C	137	65178
LA City	2001-2002	GE	EOPS Grant	60	29918
LA City	2001-2002	GP	Pell Grant	4205	10376725
LA City	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	571	258250
LA City	2001-2002	LD	Perkins Loan	46	60875
LA City	2001-2002	LL	Federal Direct Student Loan - unsubsidized	141	453752
LA City	2001-2002	LS	Federal Direct Student Loan - subsidized	354	827384
LA City	2001-2002	WF	Federal Work Study (FWS) (Federal share)	99	286040
LA Harbor	2001-2002	GB	Cal Grant B	194	224919
LA Harbor	2001-2002	GC	Cal Grant C	35	15822
LA Harbor	2001-2002	GE	EOPS Grant	179	25522

LA Harbor	2001-2002	GF	CARE Grant	65	39135
LA Harbor	2001-2002	GP	Pell Grant	2119	4156888
LA Harbor	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	464	128000
LA Harbor	2001-2002	GV	Other grant: non-institutional source	25	57315
LA Harbor	2001-2002	LD	Perkins Loan	5	6118
LA Harbor	2001-2002	LL	Federal Direct Student Loan - unsubsidized	34	105397
LA Harbor	2001-2002	LS	Federal Direct Student Loan - subsidized	126	291815
LA Harbor	2001-2002	WF	Federal Work Study (FWS) (Federal share)	141	224419
LA Mission	2001-2002	GB	Cal Grant B	230	271007
LA Mission	2001-2002	GC	Cal Grant C	25	11232
LA Mission	2001-2002	GE	EOPS Grant	1	200
LA Mission	2001-2002	GP	Pell Grant	1671	3664664
LA Mission	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	206	71229
LA Mission	2001-2002	LD	Perkins Loan	2	1250
LA Mission	2001-2002	LG	Stafford Loan, subsidized	45	95833
LA Mission	2001-2002	LH	Stafford Loan, unsubsidized	6	16265
LA Mission	2001-2002	LL	Federal Direct Student Loan - unsubsidized	9	28509
LA Mission	2001-2002	LS	Federal Direct Student Loan - subsidized	35	81400
LA Mission	2001-2002	WF	Federal Work Study (FWS) (Federal share)	56	91519
LA Pierce	2001-2002	GB	Cal Grant B	259	338726
LA Pierce	2001-2002	GC	Cal Grant C	7	2880
LA Pierce	2001-2002	GE	EOPS Grant	43	15000
LA Pierce	2001-2002	GF	CARE Grant	26	25564
LA Pierce	2001-2002	GP	Pell Grant	2056	4677076
LA Pierce	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	431	149513
LA Pierce	2001-2002	LD	Perkins Loan	40	50994
LA Pierce	2001-2002	LL	Federal Direct Student Loan - unsubsidized	98	272043
LA Pierce	2001-2002	LS	Federal Direct Student Loan - subsidized	210	469260
LA Pierce	2001-2002	WC	California State Work Study (SWS)	58	96526
LA Pierce	2001-2002	WF	Federal Work Study (FWS) (Federal share)	80	141348
LA Swest	2001-2002	GB	Cal Grant B	126	151041
LA Swest	2001-2002	GC	Cal Grant C	18	7704
LA Swest	2001-2002	GP	Pell Grant	1670	3553891
LA Swest	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	348	169660
LA Swest	2001-2002	LD	Perkins Loan	29	24700
LA Swest	2001-2002	WF	Federal Work Study (FWS) (Federal share)	92	146783
LA Trade	2001-2002	GB	Cal Grant B	337	421712

LA Trade	2001-2002	GC	Cal Grant C	143	67664
LA Trade	2001-2002	GP	Pell Grant	2742	6423570
LA Trade	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	861	360952
LA Trade	2001-2002	LD	Perkins Loan	43	52250
LA Trade	2001-2002	WF	Federal Work Study (FWS) (Federal share)	151	315569
LA Valley	2001-2002	GB	Cal Grant B	341	424401
LA Valley	2001-2002	GC	Cal Grant C	37	16560
LA Valley	2001-2002	GF	CARE Grant	1	675
LA Valley	2001-2002	GP	Pell Grant	2771	6579932
LA Valley	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	422	229800
LA Valley	2001-2002	LD	Perkins Loan	48	59000
LA Valley	2001-2002	LL	Federal Direct Student Loan - unsubsidized	28	70897
LA Valley	2001-2002	LN	Other loan: non-institutional source	15	39629
LA Valley	2001-2002	LS	Federal Direct Student Loan - subsidized	151	328810
LA Valley	2001-2002	WF	Federal Work Study (FWS) (Federal share)	99	238767
Lake Tahoe	2001-2002	GB	Cal Grant B	9	9507
Lake Tahoe	2001-2002	GE	EOPS Grant	5	1309
Lake Tahoe	2001-2002	GF	CARE Grant	13	9774
Lake Tahoe	2001-2002	GP	Pell Grant	215	417072
Lake Tahoe	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	62	24437
Lake Tahoe	2001-2002	LG	Stafford Loan, subsidized	44	109068
Lake Tahoe	2001-2002	LH	Stafford Loan, unsubsidized	12	26846
Lake Tahoe	2001-2002	LN	Other loan: non-institutional source	1	12700
Lake Tahoe	2001-2002	WE	EOPS Work Study	6	3250
Lake Tahoe	2001-2002	WF	Federal Work Study (FWS) (Federal share)	18	21271
Laney	2001-2002	GB	Cal Grant B	223	304004
Laney	2001-2002	GC	Cal Grant C	109	54864
Laney	2001-2002	GE	EOPS Grant	262	89412
Laney	2001-2002	GF	CARE Grant	83	39918
Laney	2001-2002	GP	Pell Grant	1951	4753203
Laney	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	836	465722
Laney	2001-2002	LG	Stafford Loan, subsidized	22	56711
Laney	2001-2002	LH	Stafford Loan, unsubsidized	7	15038
Laney	2001-2002	WC	California State Work Study (SWS)	22	68807
Laney	2001-2002	WF	Federal Work Study (FWS) (Federal share)	102	267465
Las Positas	2001-2002	GB	Cal Grant B	45	57389
Las Positas	2001-2002	GC	Cal Grant C	4	1656

Las Positas	2001-2002	GP	Pell Grant	381	740744
Las Positas	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	101	32200
Las Positas	2001-2002	LG	Stafford Loan, subsidized	52	126477
Las Positas	2001-2002	LH	Stafford Loan, unsubsidized	28	87434
Las Positas	2001-2002	WC	California State Work Study (SWS)	13	17579
Las Positas	2001-2002	WF	Federal Work Study (FWS) (Federal share)	24	32114
Lassen	2001-2002	GB	Cal Grant B	17	21152
Lassen	2001-2002	GC	Cal Grant C	8	3960
Lassen	2001-2002	GE	EOPS Grant	145	37365
Lassen	2001-2002	GP	Pell Grant	380	896167
Lassen	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	199	88682
Lassen	2001-2002	GU	Other grant: institutional source	173	29802
Lassen	2001-2002	GV	Other grant: non-institutional source	3	6709
Lassen	2001-2002	LG	Stafford Loan, subsidized	78	156991
Lassen	2001-2002	LH	Stafford Loan, unsubsidized	11	31243
Lassen	2001-2002	LN	Other loan: non-institutional source	1	3000
Lassen	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	1	2500
Lassen	2001-2002	WF	Federal Work Study (FWS) (Federal share)	132	278926
Lassen	2001-2002	WU	Other Work Study and matching funds	78	157892
Long Beach	2001-2002	GB	Cal Grant B	1323	1567951
Long Beach	2001-2002	GC	Cal Grant C	137	66888
Long Beach	2001-2002	GE	EOPS Grant	1837	630579
Long Beach	2001-2002	GF	CARE Grant	285	217846
Long Beach	2001-2002	GP	Pell Grant	8298	16796583
Long Beach	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	1358	761546
Long Beach	2001-2002	GU	Other grant: institutional source	296	38385
Long Beach	2001-2002	GV	Other grant: non-institutional source	2	2400
Long Beach	2001-2002	LD	Perkins Loan	116	257335
Long Beach	2001-2002	LL	Federal Direct Student Loan - unsubsidized	118	239520
Long Beach	2001-2002	LS	Federal Direct Student Loan - subsidized	1007	2520144
Long Beach	2001-2002	WC	California State Work Study (SWS)	58	142646
Long Beach	2001-2002	WF	Federal Work Study (FWS) (Federal share)	385	1155850
Long Beach	2001-2002	WU	Other Work Study and matching funds	177	547057
Los Medanos	2001-2002	GB	Cal Grant B	135	170809
Los Medanos	2001-2002	GC	Cal Grant C	24	10674
Los Medanos	2001-2002	GE	EOPS Grant	24	7050
Los Medanos	2001-2002	GF	CARE Grant	41	73500

Los Medanos	2001-2002	GP	Pell Grant	796	1712994
Los Medanos	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	109	63109
Los Medanos	2001-2002	WF	Federal Work Study (FWS) (Federal share)	84	148277
Marin	2001-2002	GB	Cal Grant B	108	137073
Marin	2001-2002	GC	Cal Grant C	40	17208
Marin	2001-2002	GE	EOPS Grant	391	88206
Marin	2001-2002	GF	CARE Grant	9	9119
Marin	2001-2002	GP	Pell Grant	944	2037297
Marin	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	209	203450
Marin	2001-2002	GU	Other grant: institutional source	128	325886
Marin	2001-2002	GV	Other grant: non-institutional source	1	11626
Marin	2001-2002	LG	Stafford Loan, subsidized	233	604273
Marin	2001-2002	LH	Stafford Loan, unsubsidized	142	445183
Marin	2001-2002	WF	Federal Work Study (FWS) (Federal share)	71	221345
Mendocino	2001-2002	GB	Cal Grant B	95	110148
Mendocino	2001-2002	GC	Cal Grant C	21	7074
Mendocino	2001-2002	GE	EOPS Grant	347	109301
Mendocino	2001-2002	GF	CARE Grant	33	19100
Mendocino	2001-2002	GP	Pell Grant	671	1352436
Mendocino	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	333	77448
Mendocino	2001-2002	GU	Other grant: institutional source	734	7255
Mendocino	2001-2002	GV	Other grant: non-institutional source	19	27059
Mendocino	2001-2002	LG	Stafford Loan, subsidized	92	242169
Mendocino	2001-2002	LH	Stafford Loan, unsubsidized	6	10425
Merced	2001-2002	GB	Cal Grant B	591	775302
Merced	2001-2002	GC	Cal Grant C	65	26928
Merced	2001-2002	GE	EOPS Grant	227	125335
Merced	2001-2002	GF	CARE Grant	45	139774
Merced	2001-2002	GP	Pell Grant	2546	5871637
Merced	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	391	248100
Merced	2001-2002	GV	Other grant: non-institutional source	9	6500
Merced	2001-2002	WF	Federal Work Study (FWS) (Federal share)	252	417292
Merritt	2001-2002	GB	Cal Grant B	71	84161
Merritt	2001-2002	GC	Cal Grant C	30	12504
Merritt	2001-2002	GE	EOPS Grant	292	53305
Merritt	2001-2002	GF	CARE Grant	35	14082
Merritt	2001-2002	GP	Pell Grant	910	1989056

Merritt	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	557	186078
Merritt	2001-2002	WC	California State Work Study (SWS)	25	57854
Merritt	2001-2002	WF	Federal Work Study (FWS) (Federal share)	90	141949
MiraCosta	2001-2002	GB	Cal Grant B	91	108519
MiraCosta	2001-2002	GC	Cal Grant C	10	3888
MiraCosta	2001-2002	GE	EOPS Grant	665	197819
MiraCosta	2001-2002	GF	CARE Grant	62	35842
MiraCosta	2001-2002	GP	Pell Grant	779	1608192
MiraCosta	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	381	134325
MiraCosta	2001-2002	GV	Other grant: non-institutional source	5	14685
MiraCosta	2001-2002	LG	Stafford Loan, subsidized	120	292490
MiraCosta	2001-2002	LH	Stafford Loan, unsubsidized	38	81398
MiraCosta	2001-2002	LN	Other loan: non-institutional source	1	4250
MiraCosta	2001-2002	WF	Federal Work Study (FWS) (Federal share)	81	121294
Mission	2001-2002	GB	Cal Grant B	78	96168
Mission	2001-2002	GC	Cal Grant C	19	6984
Mission	2001-2002	GE	EOPS Grant	429	201540
Mission	2001-2002	GF	CARE Grant	50	36600
Mission	2001-2002	GP	Pell Grant	798	1715941
Mission	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	620	265951
Mission	2001-2002	LG	Stafford Loan, subsidized	68	179893
Mission	2001-2002	LH	Stafford Loan, unsubsidized	8	18550
Mission	2001-2002	WF	Federal Work Study (FWS) (Federal share)	81	151309
Modesto	2001-2002	GB	Cal Grant B	694	851545
Modesto	2001-2002	GC	Cal Grant C	103	42336
Modesto	2001-2002	GE	EOPS Grant	370	92700
Modesto	2001-2002	GP	Pell Grant	3203	7091717
Modesto	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	835	270467
Modesto	2001-2002	LD	Perkins Loan	35	31500
Modesto	2001-2002	LN	Other loan: non-institutional source	21	30500
Modesto	2001-2002	WF	Federal Work Study (FWS) (Federal share)	153	292802
Modesto	2001-2002	WU	Other Work Study and matching funds	153	97600
Monterey	2001-2002	GB	Cal Grant B	68	80432
Monterey	2001-2002	GC	Cal Grant C	21	8928
Monterey	2001-2002	GE	EOPS Grant	193	52350
Monterey	2001-2002	GF	CARE Grant	91	113350
Monterey	2001-2002	GP	Pell Grant	685	1341983

Monterey	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	338	123838
Monterey	2001-2002	GU	Other grant: institutional source	721	229683
Monterey	2001-2002	LG	Stafford Loan, subsidized	153	402828
Monterey	2001-2002	LH	Stafford Loan, unsubsidized	115	358822
Monterey	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	1	2564
Monterey	2001-2002	WC	California State Work Study (SWS)	37	40138
Monterey	2001-2002	WF	Federal Work Study (FWS) (Federal share)	97	112406
Moorpark	2001-2002	GB	Cal Grant B	97	125991
Moorpark	2001-2002	GC	Cal Grant C	11	4752
Moorpark	2001-2002	GE	EOPS Grant	59	17400
Moorpark	2001-2002	GF	CARE Grant	10	13200
Moorpark	2001-2002	GP	Pell Grant	747	1680024
Moorpark	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	186	87343
Moorpark	2001-2002	LG	Stafford Loan, subsidized	197	521601
Moorpark	2001-2002	LH	Stafford Loan, unsubsidized	32	73914
Moorpark	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	6	46187
Moorpark	2001-2002	WF	Federal Work Study (FWS) (Federal share)	50	74081
Mt San Antonio	2001-2002	GB	Cal Grant B	716	895353
Mt San Antonio	2001-2002	GC	Cal Grant C	71	30456
Mt San Antonio	2001-2002	GF	CARE Grant	91	68125
Mt San Antonio	2001-2002	GP	Pell Grant	3122	7311900
Mt San Antonio	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	547	638500
Mt San Antonio	2001-2002	GV	Other grant: non-institutional source	1	4001
Mt San Antonio	2001-2002	LD	Perkins Loan	7	14892
Mt San Antonio	2001-2002	LL	Federal Direct Student Loan - unsubsidized	13	36008
Mt San Antonio	2001-2002	LS	Federal Direct Student Loan - subsidized	142	360977
Mt San Antonio	2001-2002	WF	Federal Work Study (FWS) (Federal share)	260	318750
Mt. San Jacinto	2001-2002	GB	Cal Grant B	274	339761
Mt. San Jacinto	2001-2002	GC	Cal Grant C	80	33714
Mt. San Jacinto	2001-2002	GE	EOPS Grant	325	2952
Mt. San Jacinto	2001-2002	GF	CARE Grant	136	119260
Mt. San Jacinto	2001-2002	GP	Pell Grant	2548	5144616
Mt. San Jacinto	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	889	378078
Mt. San Jacinto	2001-2002	GU	Other grant: institutional source	128	7447
Mt. San Jacinto	2001-2002	GV	Other grant: non-institutional source	25	5764
Mt. San Jacinto	2001-2002	LE	EOPS loan	9	1925
Mt. San Jacinto	2001-2002	LG	Stafford Loan, subsidized	568	1388519

Mt. San Jacinto	2001-2002	LH	Stafford Loan, unsubsidized	386	1009131
Mt. San Jacinto	2001-2002	LI	Other loan: institutional source	118	12100
Mt. San Jacinto	2001-2002	WF	Federal Work Study (FWS) (Federal share)	184	307590
Napa	2001-2002	GB	Cal Grant B	115	153177
Napa	2001-2002	GC	Cal Grant C	30	12528
Napa	2001-2002	GE	EOPS Grant	138	35001
Napa	2001-2002	GF	CARE Grant	22	22735
Napa	2001-2002	GP	Pell Grant	674	1436317
Napa	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	326	214692
Napa	2001-2002	GU	Other grant: institutional source	225	68382
Napa	2001-2002	GV	Other grant: non-institutional source	80	32254
Napa	2001-2002	LL	Federal Direct Student Loan - unsubsidized	55	160261
Napa	2001-2002	LS	Federal Direct Student Loan - subsidized	72	181749
Napa	2001-2002	WC	California State Work Study (SWS)	78	151154
Napa	2001-2002	WF	Federal Work Study (FWS) (Federal share)	92	123580
Napa	2001-2002	WU	Other Work Study and matching funds	27	19361
Ohlone	2001-2002	GB	Cal Grant B	79	103636
Ohlone	2001-2002	GC	Cal Grant C	8	3528
Ohlone	2001-2002	GE	EOPS Grant	127	29725
Ohlone	2001-2002	GF	CARE Grant	7	3696
Ohlone	2001-2002	GP	Pell Grant	613	1236548
Ohlone	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	153	131040
Ohlone	2001-2002	LG	Stafford Loan, subsidized	48	132071
Ohlone	2001-2002	LH	Stafford Loan, unsubsidized	20	65519
Ohlone	2001-2002	WF	Federal Work Study (FWS) (Federal share)	37	100814
Orange Coast	2001-2002	GB	Cal Grant B	787	1066724
Orange Coast	2001-2002	GC	Cal Grant C	50	21456
Orange Coast	2001-2002	GE	EOPS Grant	920	342774
Orange Coast	2001-2002	GP	Pell Grant	2715	6762794
Orange Coast	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	680	290943
Orange Coast	2001-2002	LD	Perkins Loan	104	235866
Orange Coast	2001-2002	LG	Stafford Loan, subsidized	506	1132888
Orange Coast	2001-2002	LH	Stafford Loan, unsubsidized	223	609837
Orange Coast	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	14	83587
Orange Coast	2001-2002	WF	Federal Work Study (FWS) (Federal share)	115	280105
Oxnard	2001-2002	GB	Cal Grant B	251	328959
Oxnard	2001-2002	GC	Cal Grant C	26	10440

Oxnard	2001-2002	GE	EOPS Grant	258	49250
Oxnard	2001-2002	GF	CARE Grant	88	52550
Oxnard	2001-2002	GP	Pell Grant	1674	3783532
Oxnard	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	324	156263
Oxnard	2001-2002	WF	Federal Work Study (FWS) (Federal share)	62	146391
Palo Verde	2001-2002	GB	Cal Grant B	24	29711
Palo Verde	2001-2002	GC	Cal Grant C	7	3168
Palo Verde	2001-2002	GP	Pell Grant	253	584918
Palo Verde	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	48	21286
Palo Verde	2001-2002	WF	Federal Work Study (FWS) (Federal share)	27	16470
Palomar	2001-2002	GB	Cal Grant B	191	229387
Palomar	2001-2002	GC	Cal Grant C	27	10224
Palomar	2001-2002	GE	EOPS Grant	86	74795
Palomar	2001-2002	GF	CARE Grant	8	6020
Palomar	2001-2002	GP	Pell Grant	1223	2456980
Palomar	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	488	198869
Palomar	2001-2002	GV	Other grant: non-institutional source	6	3819
Palomar	2001-2002	LL	Federal Direct Student Loan - unsubsidized	28	52813
Palomar	2001-2002	LS	Federal Direct Student Loan - subsidized	232	441995
Palomar	2001-2002	WF	Federal Work Study (FWS) (Federal share)	66	147169
Pasadena	2001-2002	GB	Cal Grant B	1045	1304238
Pasadena	2001-2002	GC	Cal Grant C	49	19458
Pasadena	2001-2002	GE	EOPS Grant	1141	477580
Pasadena	2001-2002	GF	CARE Grant	104	101839
Pasadena	2001-2002	GP	Pell Grant	4418	10056746
Pasadena	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	826	387012
Pasadena	2001-2002	GU	Other grant: institutional source	5	2102
Pasadena	2001-2002	GV	Other grant: non-institutional source	38	28837
Pasadena	2001-2002	LD	Perkins Loan	74	99313
Pasadena	2001-2002	LI	Other loan: institutional source	9	13851
Pasadena	2001-2002	LL	Federal Direct Student Loan - unsubsidized	91	231427
Pasadena	2001-2002	LS	Federal Direct Student Loan - subsidized	254	612833
Pasadena	2001-2002	WF	Federal Work Study (FWS) (Federal share)	202	351586
Porterville	2001-2002	GB	Cal Grant B	266	342213
Porterville	2001-2002	GC	Cal Grant C	40	18648
Porterville	2001-2002	GF	CARE Grant	52	31982
Porterville	2001-2002	GP	Pell Grant	1328	3113491

Porterville	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	399	133665
Porterville	2001-2002	GV	Other grant: non-institutional source	60	24770
Redwoods	2001-2002	GB	Cal Grant B	264	330724
Redwoods	2001-2002	GC	Cal Grant C	68	30744
Redwoods	2001-2002	GE	EOPS Grant	804	328162
Redwoods	2001-2002	GF	CARE Grant	73	110327
Redwoods	2001-2002	GP	Pell Grant	1948	4248214
Redwoods	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	364	171656
Redwoods	2001-2002	GV	Other grant: non-institutional source	27	75047
Redwoods	2001-2002	LG	Stafford Loan, subsidized	538	1403235
Redwoods	2001-2002	LH	Stafford Loan, unsubsidized	235	540780
Redwoods	2001-2002	LN	Other loan: non-institutional source	2	6062
Redwoods	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	7	42792
Redwoods	2001-2002	WF	Federal Work Study (FWS) (Federal share)	170	259247
Reedley College	2001-2002	GB	Cal Grant B	934	1160296
Reedley College	2001-2002	GC	Cal Grant C	49	21132
Reedley College	2001-2002	GE	EOPS Grant	507	284948
Reedley College	2001-2002	GF	CARE Grant	49	73598
Reedley College	2001-2002	GP	Pell Grant	4989	10183239
Reedley College	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	712	345354
Reedley College	2001-2002	GV	Other grant: non-institutional source	2	3725
Reedley College	2001-2002	LL	Federal Direct Student Loan - unsubsidized	33	58425
Reedley College	2001-2002	LS	Federal Direct Student Loan - subsidized	390	814865
Reedley College	2001-2002	WC	California State Work Study (SWS)	46	34347
Reedley College	2001-2002	WF	Federal Work Study (FWS) (Federal share)	229	495061
Rio Hondo	2001-2002	GB	Cal Grant B	624	730039
Rio Hondo	2001-2002	GC	Cal Grant C	60	23256
Rio Hondo	2001-2002	GE	EOPS Grant	103	43980
Rio Hondo	2001-2002	GF	CARE Grant	65	47572
Rio Hondo	2001-2002	GP	Pell Grant	3035	6335009
Rio Hondo	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	408	221100
Rio Hondo	2001-2002	GV	Other grant: non-institutional source	1	1181
Rio Hondo	2001-2002	LG	Stafford Loan, subsidized	340	905394
Rio Hondo	2001-2002	LH	Stafford Loan, unsubsidized	169	526754
Rio Hondo	2001-2002	WC	California State Work Study (SWS)	59	153804
Rio Hondo	2001-2002	WF	Federal Work Study (FWS) (Federal share)	98	184897
Riverside	2001-2002	GB	Cal Grant B	569	616596

Riverside	2001-2002	GC	Cal Grant C	155	56160
Riverside	2001-2002	GP	Pell Grant	5071	9373663
Riverside	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	605	436228
Riverside	2001-2002	LG	Stafford Loan, subsidized	340	905269
Riverside	2001-2002	LH	Stafford Loan, unsubsidized	56	171168
Riverside	2001-2002	WF	Federal Work Study (FWS) (Federal share)	281	538770
Sacramento City	2001-2002	GB	Cal Grant B	908	1107360
Sacramento City	2001-2002	GC	Cal Grant C	137	56664
Sacramento City	2001-2002	GE	EOPS Grant	1326	472529
Sacramento City	2001-2002	GF	CARE Grant	126	115585
Sacramento City	2001-2002	GP	Pell Grant	3689	8574182
Sacramento City	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	1186	632643
Sacramento City	2001-2002	LG	Stafford Loan, subsidized	456	1906156
Sacramento City	2001-2002	LH	Stafford Loan, unsubsidized	109	333197
Sacramento City	2001-2002	WF	Federal Work Study (FWS) (Federal share)	162	343912
Saddleback	2001-2002	GB	Cal Grant B	78	104151
Saddleback	2001-2002	GC	Cal Grant C	14	5976
Saddleback	2001-2002	GE	EOPS Grant	301	99183
Saddleback	2001-2002	GF	CARE Grant	14	12010
Saddleback	2001-2002	GP	Pell Grant	951	1931044
Saddleback	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	140	74750
Saddleback	2001-2002	GU	Other grant: institutional source	19	17956
Saddleback	2001-2002	GV	Other grant: non-institutional source	2	2000
Saddleback	2001-2002	LD	Perkins Loan	6	11600
Saddleback	2001-2002	LG	Stafford Loan, subsidized	199	408456
Saddleback	2001-2002	LH	Stafford Loan, unsubsidized	80	210452
Saddleback	2001-2002	LN	Other loan: non-institutional source	1	5000
Saddleback	2001-2002	WE	EOPS Work Study	1	468
Saddleback	2001-2002	WF	Federal Work Study (FWS) (Federal share)	76	140703
Saddleback	2001-2002	WU	Other Work Study and matching funds	21	37746
San Bernardino	2001-2002	GB	Cal Grant B	505	582523
San Bernardino	2001-2002	GC	Cal Grant C	120	47880
San Bernardino	2001-2002	GF	CARE Grant	64	7440
San Bernardino	2001-2002	GP	Pell Grant	4604	9843450
San Bernardino	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	263	94685
San Bernardino	2001-2002	GV	Other grant: non-institutional source	115	68202
San Bernardino	2001-2002	LD	Perkins Loan	81	35471

San Bernardino	2001-2002	WF	Federal Work Study (FWS) (Federal share)	269	745920
San Diego Adult	2001-2002	GP	Pell Grant	119	173093
San Diego Adult	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	128	115611
San Diego Adult	2001-2002	WF	Federal Work Study (FWS) (Federal share)	24	55774
San Diego Adult	2001-2002	WU	Other Work Study and matching funds	24	18588
San Diego City	2001-2002	GB	Cal Grant B	620	744936
San Diego City	2001-2002	GC	Cal Grant C	107	43128
San Diego City	2001-2002	GE	EOPS Grant	949	426688
San Diego City	2001-2002	GF	CARE Grant	69	61385
San Diego City	2001-2002	GP	Pell Grant	4150	8441920
San Diego City	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	1229	550354
San Diego City	2001-2002	GV	Other grant: non-institutional source	20	28200
San Diego City	2001-2002	LS	Federal Direct Student Loan - subsidized	1126	2851014
San Diego City	2001-2002	WF	Federal Work Study (FWS) (Federal share)	100	325356
San Diego Mesa	2001-2002	GB	Cal Grant B	667	845454
San Diego Mesa	2001-2002	GC	Cal Grant C	37	16092
San Diego Mesa	2001-2002	GE	EOPS Grant	524	168213
San Diego Mesa	2001-2002	GF	CARE Grant	24	34117
San Diego Mesa	2001-2002	GP	Pell Grant	2976	6508088
San Diego Mesa	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	693	356990
San Diego Mesa	2001-2002	GV	Other grant: non-institutional source	68	31078
San Diego Mesa	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	1	1200
San Diego Mesa	2001-2002	LN	Other loan: non-institutional source	9	55188
San Diego Mesa	2001-2002	LP	PLUS loan: parent loan for undergraduate student	23	150779
San Diego Mesa	2001-2002	LS	Federal Direct Student Loan - subsidized	969	2406354
San Diego Mesa	2001-2002	WF	Federal Work Study (FWS) (Federal share)	162	323402
San Diego Mesa	2001-2002	WU	Other Work Study and matching funds	162	107786
San Diego Miramar	2001-2002	GB	Cal Grant B	120	155403
San Diego Miramar	2001-2002	GC	Cal Grant C	14	4680
San Diego Miramar	2001-2002	GE	EOPS Grant	243	98001
San Diego Miramar	2001-2002	GF	CARE Grant	19	20866
San Diego Miramar	2001-2002	GP	Pell Grant	804	1663633
San Diego Miramar	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	186	80304
San Diego Miramar	2001-2002	GV	Other grant: non-institutional source	48	24362
San Diego Miramar	2001-2002	LS	Federal Direct Student Loan - subsidized	154	353473
San Diego Miramar	2001-2002	WF	Federal Work Study (FWS) (Federal share)	39	46629
San Diego Miramar	2001-2002	WU	Other Work Study and matching funds	39	15535

San Francisco	2001-2002	GB	Cal Grant B	581	754973
San Francisco	2001-2002	GC	Cal Grant C	64	27684
San Francisco	2001-2002	GP	Pell Grant	3526	7865803
San Francisco	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	1464	688994
San Francisco	2001-2002	LD	Perkins Loan	395	486806
San Francisco	2001-2002	LG	Stafford Loan, subsidized	622	1513943
San Francisco	2001-2002	LH	Stafford Loan, unsubsidized	423	1144446
San Francisco	2001-2002	WE	EOPS Work Study	395	616161
San Joaquin Delta	2001-2002	GB	Cal Grant B	1221	1576512
San Joaquin Delta	2001-2002	GC	Cal Grant C	125	54539
San Joaquin Delta	2001-2002	GE	EOPS Grant	960	533863
San Joaquin Delta	2001-2002	GF	CARE Grant	164	175617
San Joaquin Delta	2001-2002	GP	Pell Grant	4925	11494474
San Joaquin Delta	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	714	767962
San Joaquin Delta	2001-2002	GV	Other grant: non-institutional source	12	3589
San Joaquin Delta	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	5	4937
San Joaquin Delta	2001-2002	LE	EOPS loan	179	39210
San Joaquin Delta	2001-2002	LI	Other loan: institutional source	29	11944
San Joaquin Delta	2001-2002	LL	Federal Direct Student Loan - unsubsidized	8	31641
San Joaquin Delta	2001-2002	LS	Federal Direct Student Loan - subsidized	10	17199
San Joaquin Delta	2001-2002	WF	Federal Work Study (FWS) (Federal share)	490	971862
San Jose City	2001-2002	GB	Cal Grant B	82	103133
San Jose City	2001-2002	GC	Cal Grant C	13	5688
San Jose City	2001-2002	GE	EOPS Grant	523	219824
San Jose City	2001-2002	GF	CARE Grant	19	29943
San Jose City	2001-2002	GP	Pell Grant	892	1873196
San Jose City	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	680	197466
San Jose City	2001-2002	LL	Federal Direct Student Loan - unsubsidized	3	9500
San Jose City	2001-2002	LS	Federal Direct Student Loan - subsidized	22	52500
San Jose City	2001-2002	WF	Federal Work Study (FWS) (Federal share)	88	175815
San Mateo	2001-2002	GB	Cal Grant B	90	119629
San Mateo	2001-2002	GC	Cal Grant C	16	7128
San Mateo	2001-2002	GE	EOPS Grant	52	10434
San Mateo	2001-2002	GF	CARE Grant	7	5000
San Mateo	2001-2002	GP	Pell Grant	567	1294319
San Mateo	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	492	198850
San Mateo	2001-2002	LD	Perkins Loan	28	59130

San Mateo	2001-2002	LG	Stafford Loan, subsidized	24	62253
San Mateo	2001-2002	LH	Stafford Loan, unsubsidized	8	15441
San Mateo	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	1	4000
San Mateo	2001-2002	WF	Federal Work Study (FWS) (Federal share)	83	173283
San Mateo	2001-2002	WU	Other Work Study and matching funds	8	21028
Santa Ana	2001-2002	GB	Cal Grant B	657	853950
Santa Ana	2001-2002	GC	Cal Grant C	33	13680
Santa Ana	2001-2002	GE	EOPS Grant	195	75936
Santa Ana	2001-2002	GP	Pell Grant	2486	5859569
Santa Ana	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	599	325500
Santa Ana	2001-2002	LD	Perkins Loan	91	123903
Santa Ana	2001-2002	LG	Stafford Loan, subsidized	272	661109
Santa Ana	2001-2002	LH	Stafford Loan, unsubsidized	139	394834
Santa Ana	2001-2002	WF	Federal Work Study (FWS) (Federal share)	144	269117
Santa Barbara	2001-2002	GB	Cal Grant B	152	193204
Santa Barbara	2001-2002	GC	Cal Grant C	43	18936
Santa Barbara	2001-2002	GE	EOPS Grant	521	221148
Santa Barbara	2001-2002	GF	CARE Grant	33	52112
Santa Barbara	2001-2002	GP	Pell Grant	1504	2959050
Santa Barbara	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	531	204673
Santa Barbara	2001-2002	GU	Other grant: institutional source	332	849332
Santa Barbara	2001-2002	GV	Other grant: non-institutional source	4	4000
Santa Barbara	2001-2002	LG	Stafford Loan, subsidized	210	398708
Santa Barbara	2001-2002	LH	Stafford Loan, unsubsidized	122	217735
Santa Barbara	2001-2002	WF	Federal Work Study (FWS) (Federal share)	235	454336
Santa Monica	2001-2002	GB	Cal Grant B	683	793732
Santa Monica	2001-2002	GC	Cal Grant C	25	10728
Santa Monica	2001-2002	GE	EOPS Grant	175	35361
Santa Monica	2001-2002	GF	CARE Grant	36	70675
Santa Monica	2001-2002	GP	Pell Grant	3322	7148617
Santa Monica	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	2623	1590496
Santa Monica	2001-2002	LG	Stafford Loan, subsidized	182	398205
Santa Monica	2001-2002	LH	Stafford Loan, unsubsidized	34	69677
Santa Monica	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	5	21631
Santa Monica	2001-2002	WF	Federal Work Study (FWS) (Federal share)	504	584014
Santa Monica	2001-2002	WU	Other Work Study and matching funds	13	21224
Santa Rosa	2001-2002	GB	Cal Grant B	192	227633

Santa Rosa	2001-2002	GC	Cal Grant C	131	57992
Santa Rosa	2001-2002	GE	EOPS Grant	387	114160
Santa Rosa	2001-2002	GF	CARE Grant	36	26020
Santa Rosa	2001-2002	GP	Pell Grant	1629	3578756
Santa Rosa	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	360	220071
Santa Rosa	2001-2002	GU	Other grant: institutional source	7	7837
Santa Rosa	2001-2002	GV	Other grant: non-institutional source	153	98400
Santa Rosa	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	1	3389
Santa Rosa	2001-2002	LL	Federal Direct Student Loan - unsubsidized	174	497927
Santa Rosa	2001-2002	LS	Federal Direct Student Loan - subsidized	439	1156621
Santa Rosa	2001-2002	WF	Federal Work Study (FWS) (Federal share)	139	271148
Sequoias	2001-2002	GB	Cal Grant B	859	1127735
Sequoias	2001-2002	GC	Cal Grant C	80	34992
Sequoias	2001-2002	GE	EOPS Grant	852	349038
Sequoias	2001-2002	GF	CARE Grant	148	91370
Sequoias	2001-2002	GP	Pell Grant	3584	8035251
Sequoias	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	673	262057
Sequoias	2001-2002	LG	Stafford Loan, subsidized	111	250946
Sequoias	2001-2002	WC	California State Work Study (SWS)	101	131691
Sequoias	2001-2002	WF	Federal Work Study (FWS) (Federal share)	243	339950
Shasta	2001-2002	GB	Cal Grant B	349	458393
Shasta	2001-2002	GC	Cal Grant C	98	44064
Shasta	2001-2002	GP	Pell Grant	2362	5072238
Shasta	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	712	346699
Shasta	2001-2002	GV	Other grant: non-institutional source	805	303273
Shasta	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	13	24894
Shasta	2001-2002	LG	Stafford Loan, subsidized	529	1414144
Shasta	2001-2002	LH	Stafford Loan, unsubsidized	334	854355
Shasta	2001-2002	WF	Federal Work Study (FWS) (Federal share)	100	203311
Sierra	2001-2002	GB	Cal Grant B	267	351050
Sierra	2001-2002	GC	Cal Grant C	65	31704
Sierra	2001-2002	GF	CARE Grant	54	37500
Sierra	2001-2002	GP	Pell Grant	2340	5011178
Sierra	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	544	346478
Siskiyous	2001-2002	GB	Cal Grant B	115	151671
Siskiyous	2001-2002	GC	Cal Grant C	31	16704
Siskiyous	2001-2002	GE	EOPS Grant	116	17100

Siskiyous	2001-2002	GF	CARE Grant	19	2956
Siskiyous	2001-2002	GP	Pell Grant	727	1677105
Siskiyous	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	93	42003
Siskiyous	2001-2002	GV	Other grant: non-institutional source	93	51951
Siskiyous	2001-2002	GW	Bureau of Indian Affairs (BIA) Grant	6	14234
Siskiyous	2001-2002	LG	Stafford Loan, subsidized	256	664121
Siskiyous	2001-2002	LH	Stafford Loan, unsubsidized	79	179918
Siskiyous	2001-2002	LP	PLUS loan: parent loan for undergraduate student.	18	103015
Siskiyous	2001-2002	WF	Federal Work Study (FWS) (Federal share)	71	85008
Skyline	2001-2002	GB	Cal Grant B	105	132037
Skyline	2001-2002	GC	Cal Grant C	13	5148
Skyline	2001-2002	GE	EOPS Grant	14	5848
Skyline	2001-2002	GF	CARE Grant	25	10202
Skyline	2001-2002	GP	Pell Grant	807	1701082
Skyline	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	464	154181
Skyline	2001-2002	GV	Other grant: non-institutional source	92	37050
Skyline	2001-2002	LG	Stafford Loan, subsidized	48	133463
Skyline	2001-2002	LH	Stafford Loan, unsubsidized	1	3395
Skyline	2001-2002	WF	Federal Work Study (FWS) (Federal share)	124	241344
Skyline	2001-2002	WU	Other Work Study and matching funds	3	3581
Solano	2001-2002	GB	Cal Grant B	136	154435
Solano	2001-2002	GC	Cal Grant C	40	19872
Solano	2001-2002	GE	EOPS Grant	261	153289
Solano	2001-2002	GF	CARE Grant	36	30811
Solano	2001-2002	GP	Pell Grant	1279	2439376
Solano	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	271	166652
Solano	2001-2002	GV	Other grant: non-institutional source	2	7500
Solano	2001-2002	LG	Stafford Loan, subsidized	247	665906
Solano	2001-2002	LH	Stafford Loan, unsubsidized	206	611730
Solano	2001-2002	WF	Federal Work Study (FWS) (Federal share)	117	233883
Southwestern	2001-2002	GB	Cal Grant B	780	941920
Southwestern	2001-2002	GC	Cal Grant C	98	41438
Southwestern	2001-2002	GE	EOPS Grant	682	43679
Southwestern	2001-2002	GF	CARE Grant	74	55550
Southwestern	2001-2002	GP	Pell Grant	3466	8065091
Southwestern	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	935	380233
Southwestern	2001-2002	LG	Stafford Loan, subsidized	274	595754

Southwestern	2001-2002	WC	California State Work Study (SWS)	92	82214
Southwestern	2001-2002	WF	Federal Work Study (FWS) (Federal share)	308	490764
Southwestern	2001-2002	WU	Other Work Study and matching funds	107	47274
Taft	2001-2002	GB	Cal Grant B	27	26223
Taft	2001-2002	GP	Pell Grant	300	672397
Taft	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	132	46887
Taft	2001-2002	WC	California State Work Study (SWS)	20	23811
Taft	2001-2002	WE	EOPS Work Study	12	15306
Taft	2001-2002	WF	Federal Work Study (FWS) (Federal share)	37	37759
Taft	2001-2002	WU	Other Work Study and matching funds	305	512310
Ventura	2001-2002	GB	Cal Grant B	177	229644
Ventura	2001-2002	GC	Cal Grant C	18	7560
Ventura	2001-2002	GE	EOPS Grant	214	82850
Ventura	2001-2002	GF	CARE Grant	32	45584
Ventura	2001-2002	GP	Pell Grant	1392	3166858
Ventura	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	336	155345
Ventura	2001-2002	LG	Stafford Loan, subsidized	332	903206
Ventura	2001-2002	LH	Stafford Loan, unsubsidized	46	146062
Ventura	2001-2002	WF	Federal Work Study (FWS) (Federal share)	87	156385
Victor Valley	2001-2002	GB	Cal Grant B	287	338661
Victor Valley	2001-2002	GC	Cal Grant C	112	46080
Victor Valley	2001-2002	GE	EOPS Grant	22	10000
Victor Valley	2001-2002	GF	CARE Grant	119	20152
Victor Valley	2001-2002	GP	Pell Grant	3452	7103604
Victor Valley	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	687	277355
Victor Valley	2001-2002	GV	Other grant: non-institutional source	46	27600
Victor Valley	2001-2002	LL	Federal Direct Student Loan - unsubsidized	262	699556
Victor Valley	2001-2002	LS	Federal Direct Student Loan - subsidized	616	1339732
Victor Valley	2001-2002	WF	Federal Work Study (FWS) (Federal share)	164	353452
West Hills Coalinga	2001-2002	GB	Cal Grant B	239	310810
West Hills Coalinga	2001-2002	GC	Cal Grant C	33	15696
West Hills Coalinga	2001-2002	GE	EOPS Grant	325	80205
West Hills Coalinga	2001-2002	GP	Pell Grant	1470	3130243
West Hills Coalinga	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	354	126152
West Hills Coalinga	2001-2002	GU	Other grant: institutional source	143	108035
West Hills Coalinga	2001-2002	LL	Federal Direct Student Loan - unsubsidized	47	155485
West Hills Coalinga	2001-2002	LS	Federal Direct Student Loan - subsidized	143	381335

West Hills Coalinga	2001-2002	WF	Federal Work Study (FWS) (Federal share)	124	118062
West LA	2001-2002	GB	Cal Grant B	118	145231
West LA	2001-2002	GC	Cal Grant C	46	21024
West LA	2001-2002	GP	Pell Grant	1461	3192301
West LA	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	164	110200
West LA	2001-2002	LD	Perkins Loan	29	31744
West LA	2001-2002	LG	Stafford Loan, subsidized	153	432217
West LA	2001-2002	LH	Stafford Loan, unsubsidized	47	163192
West LA	2001-2002	WF	Federal Work Study (FWS) (Federal share)	64	149503
West Valley	2001-2002	GB	Cal Grant B	71	85122
West Valley	2001-2002	GC	Cal Grant C	13	5616
West Valley	2001-2002	GE	EOPS Grant	398	200156
West Valley	2001-2002	GF	CARE Grant	20	17250
West Valley	2001-2002	GP	Pell Grant	753	1496670
West Valley	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	502	203750
West Valley	2001-2002	LG	Stafford Loan, subsidized	68	172679
West Valley	2001-2002	LH	Stafford Loan, unsubsidized	1	700
West Valley	2001-2002	WF	Federal Work Study (FWS) (Federal share)	95	191191
Yuba	2001-2002	GB	Cal Grant B	505	657566
Yuba	2001-2002	GC	Cal Grant C	130	60264
Yuba	2001-2002	GE	EOPS Grant	1002	242638
Yuba	2001-2002	GF	CARE Grant	114	64600
Yuba	2001-2002	GP	Pell Grant	3371	7149446
Yuba	2001-2002	GS	SEOG (Supplemental Educational Opportunity Grant)	982	225534
Yuba	2001-2002	GU	Other grant: institutional source	137	34737
Yuba	2001-2002	GV	Other grant: non-institutional source	38	15200
Yuba	2001-2002	LG	Stafford Loan, subsidized	211	624200
Yuba	2001-2002	LH	Stafford Loan, unsubsidized	40	111193
Yuba	2001-2002	WC	California State Work Study (SWS)	60	40529
Yuba	2001-2002	WF	Federal Work Study (FWS) (Federal share)	173	209243

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

AB 2453

CONSENT

Bill No: AB 2453
Author: Runner (R)
Amended: 4/6/00 in Assembly
Vote: 21

SENATE EDUCATION COMMITTEE : 14-0, 6/14/00
AYES: Alpert, McPherson, Alarcon, Chesbro, Dunn, Hayden, Haynes, Hughes, Knight, Monteith, O'Connell, Ortiz, Sher, Vasconcellos

ASSEMBLY FLOOR : 74-0, 5/11/00 (Passed on Consent) - See last page for vote

SUBJECT : Pupil records

SOURCE : Author

DIGEST : This bill authorizes foster family agencies with jurisdiction over currently enrolled or former pupils to access records of grades and transcripts, and individualized education plans maintained by school districts or private schools of those pupils.

ANALYSIS : Existing law authorizes parents of currently enrolled or former pupils access to any and all pupil records related to their children which are maintained by school districts or private schools. In addition, these records may be accessed - usually with either parental consent or by court order - by non-school authorities for a variety of purposes, such as for law enforcement or probation activities.

CONTINUED

Existing law also finds and declares that the mobility of pupils in foster care often disrupts their educational experience.

This bill authorizes foster family agencies with jurisdiction over currently enrolled or former pupils to access records of grades and transcripts, and individualized education plans maintained by school districts or private schools of those pupils.

Comments :

Need for the bill . In material provided by the author, it is noted that private foster agencies find it difficult to track the records of children in their care since they do not have direct access except through the government social worker assigned to the pupil's case.

Foster children are placed in numerous homes throughout their stay in foster care. Each time they are moved, the new foster parent must access the pupil's school records and attempt to reconstruct the child's educational background. If the private foster agency had permission to access these records they would be able to take some of the burden off of the new parent, and expedite their review of the child's school records.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (Verified 6/15/00)

California Teachers Association
County Welfare Directors Association

ASSEMBLY FLOOR :
AYES: Aanestad, Ackerman, Alquist, Aroner, Ashburn, Baldwin, Bates, Bock, Brewer, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Floyd, Gallegos, Granlund, Havice, Honda, House, Jackson,

Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Margett, Mazzoni, McClintock, Migden, Nakano, Olberg, Oller, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Zettel, Hertzberg
NOT VOTING: Battin, Baugh, Florez, Frusetta, Wright, Vacancy

NC:jk 6/15/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

BILL ANALYSIS

AB 1539

Honeycutt (R)

8/30/93 in Senate

21

78-0, p. 2579, 6/10/93
(Passed Assembly on Consent)

SUBJECT: Pupil records: access by law enforcement

SOURCE: Author

DIGEST: This bill provides designated peace officers with access to špupil records without written parental consent or under judicial order.

ANALYSIS: Under current law, school districts are prohibited from šauthorizing access to pupil records to any person without parental consent, šor under judicial order, unless specified by statute for educationally šrelated purposes.

This bill:

1. Requires school districts to provide to designated peace officers any information it has concerning a particular pupil's identity and location relating to the transfer of that pupil's records to another school district in any state or private school within California, when probable cause exists that the pupil has been kidnaped and that the pupil's abductor may have enrolled the pupil in a school and the law enforcement agency has begun an active investigation.

   Only specifically designated law enforcement officers whose names have been submitted to the school district in writing by a law enforcement agency would be permitted to review school records.

□2. Defines "designated peace officers" as any sheriff, police officer, š marshal, constable, portwarden, district attorney inspector, or authorized federal employee.

3. Makes it a misdemeanor for any law enforcement agency to request information for any other purpose other than to assist in the investigation of suspected kidnapping.

4. Requires peace officers requesting pupil information to provide to the school district a letter confirming the request for pupil records prior to the release of any pupil information.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: Yes

SUPPORT: (Verified 9/7/93)

California Council of Police and Sheriffs
Capitol Resource Institute
Los Angeles County Probation Department
Sacramento County Deputy Sheriffs' Association
California State Juvenile Officers Association
California State Sheriffs Association
San Bernardino County Sheriff's Department

OPPOSITION: (Verified 9/7/93)

American Civil Liberties Union

ARGUMENTS IN SUPPORT: Proponents argue the intent of the bill is to located kidnapped children by giving peace officers the authority to access school records of children who are suspected of having been kidnapped.

According to the author's office, California's missing children is a serious societal dilemma, with more than 78,000 California children missing each year. This bill would represent one more method to help in finding these children.

ARGUMENTS IN OPPOSITION: The ACLU argues, "Students and their parents who provide personal information to schools have a reasonable expectation that the information will remain private. Given the expectation of privacy and the privacy interests involved, this information should not be released absent either: (a) the prior consent of the parent; (b) an appropriate court order showing good cause; or (c) the issuance of a search warrant. There is absolutely no reason why a valid search warrant or court order cannot be obtained under these circumstances.

"Further, if the police suspect that a child has been transferred to a different school, they need only obtain a warrant of the original school to find out which school has requested the records. Thus, they will obtain the necessary information where the child has been transferred to."

NM:ctl 9/7/93 Senate Floor Analyses

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	____	486	Ad
886	746	____	R
886.1	746	____	Am
886.3	746	____	Am
887	746	____	R
887.2	746	____	Am
888	746	____	R
888 1	746	____	Am
888.2	746	____	Am
889	746	____	R
889 1	746	____	R
889.3	746	____	Am
889.4	746	____	Am
890	746	____	R
890.2	746	____	Am
891	746	____	Am
891.1	746	____	Am
892	746	____	Am
893 20	241	____	R
893 21	241	____	R
894	883	____	Am
	1108	____	Am
	3791	____	Am
	____	449	Am
	____	601	Am
	____	1590	Am
894 05	2699	____	Ad
894.5	648	____	Ad
894 6	____	1908	Ad
895	____	449	Am
	____	581	Am
	____	1590	Am
895 6	3807	____	Am
895 7	3791	____	Am
	3807	____	Am
895.8	3791	____	Am
	3807	____	Am
897.2	746	____	Ad
899	1985	____	Am
899 6	746	____	Am
899 7	746	____	Am
899 8	2836	____	Ad
921	1448	____	Am
924.6	2333	____	Ad
926	4017	____	Ad
935	2118	____	Am
938.2	239	____	Am
	240	____	Am
939.5	1026	____	Ad
945	1442	____	Am
	____	1050	Am
	____	1844	Am
946	524	____	R, Am
964	3321	____	Am
966	3921	____	Am, S
966.5	____	1418	Ad
967	3921	____	Am
968	3426	____	Am
1004	2961	____	R
1004.5	____	206	Ad (EN)
1010.85	____	206	Am, Am & EN
1016	241	____	Am
	1442	____	Am
1016 5	241	____	Am
1016.6	241	____	Am
	1442	____	Am
	1902	____	Am
	1903	____	Am
1016.7	1903	____	Ad
1017	3098	____	S
1017 5	3098	____	Ad
1018.5	____	558	Am
1019	2819	____	Am
1052	358	____	Am
1052.1	358	____	Ad
1064	541	____	Am
1064.1	541	____	Am
1065	541	____	Am
1070	____	2059	Am
1071	2961	____	Am
1072	2961	____	Am
1075 4	2961	____	Am
1081.5	278	____	Am
	3744	____	Am
1084 1	241	____	R
1084 2	241	____	R
1084 3	241	____	R
1084 4	241	____	R
1084 5	241	____	R
1085	3386	____	Am
1101	3321	____	Am
1102	3321	____	Am
	4319	____	Am
	____	230	Am
	____	1474	Am
1104	3321	____	Am
	4319	____	Am
	____	230	Am
	____	1474	Am
1105	3321	____	Am
1106	4123	____	Ad
1111	3321	____	Am
	4319	____	Am
	____	230	Am
1111 2	3321	____	Am
	4123	____	Am
1111 3	3321	____	Am
	4319	____	R
	____	230	Am
1111 4	3321	____	Am
	4319	____	Am
	____	230	Am
1111.5	____	230	Am
1111 7	4319	____	Am
	____	230	Am
	____	1474	Am
1111 8	3293	____	Ad
	3321	____	Am
1111 11	3293	____	Ad
1113	____	1359	Am
1119	3321	____	Am
1120	3321	____	Am
1122	1040	____	Am
1124 2	3321	____	Am
1125 7	3321	____	Am
1128	1040	____	Am
1142	____	230	Am
1145	1193	____	Am

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Section	Assembly bill	Senate bill	Effect
24306	1744	----	Am
24308.8	3382	----	Ad
24308.5	1955	----	Ad
24308.6	3382	----	Ad
24304	----	801	Am
24304.1	3953	----	Ad
24305.1	----	802	Ad
24305.5	----	1118	Ad
24306	1532	----	Am
24306.1	1532	----	Ad
24310.5	1955	----	Ad
24314	4032	----	Ad
24315	2868	----	Ad
	----	1414	Ad
24316	541	----	Am
24317	----	625	Ad
	----	692	Ad
	----	1808	Ad
24321	3953	----	Ad
24322	3953	----	Ad
24323	3953	----	Ad
24324	3953	----	Ad
24325	3953	----	Ad
24326	3953	----	Ad
24327	3953	----	Ad
24328	3953	----	Ad
24329	3953	----	Ad
24330	3953	----	Ad
Div. 18, Ch. 10 (heading)	541	----	Am
24351	541	----	Am
24451	1583	----	Am
24502	541	----	Am
24560	541	----	Am
24561	541	----	Am
24562	541	----	Am
24564	541	----	Am
24565	541	----	Am
Div. 18, Ch. 12 (heading)	541	----	Am
24651	541	----	Am
24652	541	----	Am
Div. 18, Ch. 12.5 (heading)	541	----	Am
	1244	----	Am
24675	541	----	Am
	1244	----	Am
	4190	----	Am
24676	541	----	Am
	1244	----	Am
	4190	----	Am
24677	1244	----	Am
24678	1244	----	Am
	4190	----	Am
24679	1244	----	Am
Div. 18, Ch. 13 (heading)	541	----	Am
Div. 18, Ch. 13, Art. 2 (heading)	541	----	Am
24725	----	2378	Am
24751	541	----	Am
24752	541	----	Am
24753	541	----	Am
	599	----	S
Div. 18, Ch. 13, Art. 3 (heading)	541	----	Am
24754	541	----	Am
Div. 18, Ch. 13, Art. 5 (heading)	541	----	Am
24951	541	----	Am
24952	541	----	Am
24954	541	----	Am
Div. 18, Ch. 13, Art. 6 (heading)	541	----	Am
25053	541	----	Am
25054	541	----	Am
Div. 18, Ch. 14 (heading)	541	----	Am
25200	541	----	Am
25201	541	----	Am
25205	3284	----	Am
25212	3517	----	Am
25236	541	----	Am
25331	----	2378	Am
25332	----	2378	Am
25333	----	2378	Am
25371	----	964	Am
25372	1986	----	Ad
25410.1	241	----	R
	526	----	R
25410.2	241	----	R
	526	----	R
25412.5	3321	----	Am
25413	3321	----	Am
25413.3	2414	----	R
25413.9	----	861	Am
25416	3321	----	Am
	----	588	Am
	----	1455	Am
25424.6	241	----	Ad (RN)
25424.7	241	----	Ad (RN)
	2961	----	Am & RN
	----	25	Ad
	----	2108	Am (as ad by Stats. 1973, Ch. 1142)
25424.9	2961	----	Ad (RN)
25425	----	25	Am
	----	2108	Am
25425.1	1163	----	Am
	1417	----	Am
	----	1160	Am
25425.2	46	----	Ad
	----	6	Ad
25425.4	1163	----	Ad
25425.5	4322	----	Am
25428.1	241	----	Am & RN
25428.2	241	----	Am & RN
25429.5	814	----	Ad

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Section	Assembly bill	Senate bill	Effect
1009.7	2078	----	Ad
	4532	----	Ad
1037	----	66	Am
	----	182	R
1047.5	278	----	Ad
1048	278	----	Ad
	----	1547	Am
1051	----	765	Am
1052	3947	----	Am
	----	1184	S
1070	3676	----	Am
1073	4352	----	R, Am
1081.5	1382	----	Am
	2373	----	Am
	3149	----	Am
1084	----	2126	Ad
1086	3184	----	Am
1102	627	----	Am
	3626	----	Am
1104	627	----	Am
1111	627	----	Am
1111.3	627	----	R
1111.4	627	----	Am
1111.7	627	----	Am
1111.9	824	----	R
1114	1959	----	Am
	----	1570	Am
1117.5	3098	----	Ad
1118	----	1546	Am
1120	3349	----	Am
1122	824	----	Am
	1547	----	Am
1126	824	----	Am
1128	824	----	Am
1131	3467	----	R
	3614	----	Am, R
1132	3467	----	R
	3614	----	R
1132.4	3467	----	R
	3614	----	R
	4106	----	Am
1132.5	3467	----	R
	3614	----	R
1133	3467	----	R
	3614	----	R & Ad, R
1133.5	3614	----	Ad
1134	3467	----	R
	3614	----	R
1135	3467	----	R
	3614	----	R
	4106	----	Am
1136	3467	----	R
	3614	----	R
1137	3467	----	R
	3614	----	R
1138	3467	----	R
	3614	----	R
1139	3467	----	R
	3614	----	R
1140	3467	----	R
	3614	----	R
1141	3467	----	R
	3614	----	R
1142	3467	----	R
	3614	----	R
1143	3467	----	R
	3614	----	R
1144	3467	----	R
	3614	----	R
1145	3467	----	R
	3614	----	R
1146	62	----	R
	3467	----	R
	3614	----	R
1147	3467	----	R
	3614	----	R
1148	3467	----	R
	3614	----	R
	4106	----	Am
	4169	----	Am
	----	991	Am
	----	1667	Am
1149	3467	----	R
	3614	----	R
	----	991	Am
1150	62	----	R & Ad
	3467	----	R
	3614	----	R
1151	3467	----	R
	3614	----	R
	4106	----	R
	4169	----	R
	----	991	Am
	----	1667	Am
1152	62	----	R
	3467	----	R
	3614	----	R
	----	991	Am
1153	62	----	Am
	3467	----	R
	3614	----	R
	----	991	Am
1154	62	----	Am
	3467	----	R
	3614	----	R
	----	991	Am
1155	62	----	Ad
1162	611	----	Am
	627	----	Am
	3466	----	Am
1163	611	----	Am
1203	----	736	Am
1203.2	2782	----	Ad
	----	1755	Ad
1203.5	----	1569	Am
1224	824	----	Am
1225.1	824	----	Ad
	4025	----	Ad
1230	----	736	Am
	----	1073	Am
1231	2019	----	Am
	2891	----	Am
1251	----	1964	Am
1301	115	----	Am
	1961	----	Am
	2018	----	R
1302	2018	----	R
1303	2018	----	R
1304	2018	----	R
1307	2018	----	R

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Section	Assembly bill	Senate bill	Effect
23802	2182	----	Am, S
	2996	----	Am
23803	3757	----	Am
23805	444	----	Am
	2001	----	Am
	3757	----	Am
24000.1	970	----	Am
24054	3039	----	Am
	----	693	Am
24054.3	3039	----	Ad
24055	2998	----	Am
24057	3078	----	Am
24080	1558	----	Ad
	----	1132	Ad
24081	1558	----	Ad
	----	1132	Ad
24082	1558	----	Ad
	----	1132	Ad
24083	----	1132	Ad
24120	3304	----	Ad
24121	3304	----	Ad
24122	3304	----	Ad
24123	3304	----	Ad
24124	3304	----	Ad
24125	3304	----	Ad
24171	----	646	Ad
24172	----	646	Ad
24173	----	646	Ad
24174	----	646	Ad
24175	----	646	Ad
24176	----	646	Ad
24177	----	646	Ad
24201	1689	----	Am
	4344	----	Am
24201.2	1689	----	Ad
	3470	----	Ad
	4344	----	Ad
24201.3	1689	----	Ad
	4344	----	Ad
24201.7	----	1771	Ad
24204	----	140	Am
	----	1799	Am
24209	1546	----	R
24209.6	932	----	Ad
24210	1546	----	R
24211	1546	----	R
24215	1826	----	Ad
24218	----	894	Ad
24217	1879	----	Ad
	3015	----	Ad
24301	4434	----	Am
24301.5	1718	----	Ad
	----	772	Ad
24302	1689	----	Am
24302.5	4434	----	Ad
24303	518	----	Am
	1689	----	Am
24304	----	459	Am
24312	1689	----	Am
24313.5	1096	----	Ad
	----	772	Ad
24313.6	3718	----	Ad
24314	1236	----	Ad
24315	804	----	Ad
24317	1312	----	Ad
	----	57	Ad
	----	1588	Ad
24320	1055	----	Ad
	----	1615	Ad
24321	1055	----	Ad
	4252	----	Ad
	----	1615	Ad
24322	1055	----	Ad
	----	1615	Ad
24323	1055	----	Ad
	----	1615	Ad
24324	1055	----	Ad
	----	1615	Ad
24325	1055	----	Ad
	----	1615	Ad
24326	1055	----	Ad
	----	1615	Ad
24503	266	----	Am
24651	----	497	Am
Div. 18, Ch 12 5 (heading)	4302	----	Am
24675	229	----	Am
	4302	----	Am
24676	229	----	Am
	4302	----	Am
24677	4302	----	Am
24678	229	----	Am
	4302	----	Am
24679	4302	----	Am
25060	----	274	Ad, Ad & R
25061	----	274	Ad, Ad & R
25062	----	274	Ad, Ad & R
25063	----	274	Ad, Ad & R
25064	----	274	Ad, Ad & R
25065	----	274	Ad & R
25390	2811	----	Am
25391	2811	----	Am
25392	2811	----	Am
25393	2811	----	Am
	----	42	Am
	----	1880	Am
25411.5	2989	----	Am
25411.6	2728	----	Am
25411.7	2728	----	Ad
25414	3467	----	R
	3614	----	R
25416	166	----	Am
25422 8	3418	----	Ad
25428 6	1718	----	Ad
25424 8	----	1634	Ad
25425	1671	----	Am
	2655	----	Am
25426	3418	----	Ad
25427 8	4430	----	Ad
25427 7	----	2135	Ad
25430	----	182	Ad
25430.1	----	182	Ad
	----	1493	Am

Synonyms: culture, cultivation, breeding, refinement, gentility, taste. These nouns are applied to personal achievement in the development of intellect, manners, and aesthetic appreciation. *Culture*, which overlaps the others, implies enlightenment attained through close association with and appreciation of the highest level of civilization. *Cultivation* usually refers to the self-improvement or self-development by which a person acquires culture. *Breeding* is the development of good character and behavior, and is especially revealed in manners, poise, and sensitivity to the feelings of others. *Refinement*, the highest product of breeding, stresses aversion to coarseness; sometimes it may imply a delicacy of feeling associated with fastidiousness. *Gentility* is sometimes still synonymous with refinement or good birth; in modern usage it may suggest extreme elegance in behavior or manners. *Taste* is the capacity for recognizing and appreciating what is aesthetically superior.

cul·tured (kŭl′chərd) *adj.* 1. Cultivated. 2. Produced under artificial and controlled conditions: *cultured pearls.*

cul·tus (kŭl′təs) *n., pl.* **-tuses** or **-ti** (-tī′). A religious cult. [New Latin, from Latin *cultus*, worship, CULT.]

cul·ver (kŭl′vər) *n. Poetic.* A dove; pigeon. [Middle English *culver*, Old English *culufre*, from Vulgar Latin *columbra* (unattested), from Latin *columbula*, diminutive of *columba*, dove. See **kel-**[2] in Appendix.*]

cul·ver·in (kŭl′vər-ĭn) *n.* 1. A type of early musket. 2. A heavy cannon used in the 16th and 17th centuries. [Middle English, from Old French *coulevrine*, "serpentine," from *couleuvre*, snake, from Vulgar Latin *colobra* (unattested), from Latin *colubra*, feminine of *coluber*, snake. See **cobra.**]

Cul·ver's root (kŭl′vərz). 1. A North American plant, *Veronicastrum virginicum*, having spikes of small white or purplish flowers. 2. The root of this plant, formerly used as a cathartic and emetic. [After a Dr. *Culver*, 18th-century American physician.]

cul·vert (kŭl′vərt) *n.* A sewer or drain crossing under a road or embankment. [Origin unknown.]

cum (kŏm, kŭm) *prep.* Together with; plus. Used in combination: *her attic-cum-studio.* [Latin. See **kom** in Appendix.*]

Cu·mae (kyōō′mē). An ancient town and the earliest Greek colony in Italy, on the coast of Campania, west of Naples. —**Cu·mae′an** *adj.*

Cu·ma·ná (kōō′mä-nä′). A city of northeastern Venezuela on the Caribbean; the oldest permanent Spanish settlement in South America (founded in 1523). Population, 70,000.

Cumb Cumberland (English county).

cum·ber (kŭm′bər) *tr.v.* **-bered, -bering, -bers.** 1. To weigh down; burden. 2. To hamper; obstruct. —*n.* A hindrance; encumbrance. [Middle English *combren*, perhaps from Old French *combrer*, from *combre*, hindrance.] —**cum′ber·er** *n.*

Cum·ber·land (kŭm′bər-lənd) 1. *Abbr.* **Cumb** A county of England occupying 1,520 square miles in the northwest. Population, 294,000. County seat, Carlisle. 2. A city of northwestern Maryland on the Potomac. Population, 33,000. 3. A river rising in southeastern Kentucky and flowing 690 miles through Kentucky and Tennessee to the Ohio in western Kentucky.

Cum·ber·land Gap (kŭm′bər-lənd). A pass through the Cumberland Mountains at the junction of the borders of Kentucky, Virginia, and Tennessee.

Cum·ber·land Mountains (kŭm′bər-lənd). Also **Cum·ber·land Plateau.** The western section of the Appalachian Mountains, extending along the Virginia-Kentucky border and into central Tennessee. Average elevation, 2,000 feet.

Cum·ber·land Road (kŭm′bər-lənd). The first national highway in the United States, constructed during the early 19th century and extending originally from Cumberland, Maryland, to central Illinois. Also called "National Road."

cum·ber·some (kŭm′bər-səm) *adj.* 1. Clumsy; unwieldy. 2. Burdensome. —See Synonyms at **heavy.** —**cum′ber·some·ly** *adv.* —**cum′ber·some·ness** *n.*

cum·brance (kŭm′brəns) *n.* 1. Encumbrance; burden. 2. Trouble. [Middle English *cumbraunce*, from *cumbren*, to CUMBER.]

Cum·bri·a (kŭm′brē-ə). The southern portion of the ancient kingdom of **Strathclyde and Cumbria** *(see).* [Medieval Latin, from Welsh *Cymry*, CAMBRIA.]

Cum·bri·an Mountains (kŭm′brē-ən). A range of hills in northwestern England, west of the Pennine Chain. Highest elevation, Scafell Pike (3,210 feet).

cum·brous (kŭm′brəs) *adj.* Cumbersome. [Middle English, from *cumbren*, to CUMBER.]

cum grā·no sa·lis (kŏm grä′nō sä′lĭs, kŭm grā′nō sā′lĭs). *Latin.* With a grain of salt; with skepticism.

cum·in (kŭm′ĭn) *n.* Also **cum·min.** 1. An Old World plant, *Cuminum cyminum*, having finely divided leaves and small white or pinkish flowers. 2. The aromatic seeds of this plant, used as a condiment. [Middle English *comin*, from Old French *cumin*, from Latin *cuminum*, from Greek *kuminon*, from Semitic, akin to Hebrew *kammōn*, Akkadian *kamūnu.*]

cum lau·de (kŏom lou′də, lou′dē, kŭm lô′dē). With honor. Used on diplomas as a mark of high standing. Compare **magna cum laude, summa cum laude.** [New Latin, "with praise."]

cum·mer·bund (kŭm′ər-bŭnd′) *n.* Also **kum·mer·bund.** A broad, pleated sash worn as an article of men's formal dress. [Hindi *kamarband*, from Persian, loinband, waistband : *kamar*, loins, waist (see **kemer-** in Appendix*) + *band*, band (see **bhendh-** in Appendix*).]

Cum·mings (kŭm′ĭngz), **Edward Estlin** (**"e e cummings"**). 1894–1962. American poet, playwright, and artist.

cum·quat. Variant of **kumquat.**

cum·shaw (kŭm′shô′) *n.* A tip; gratuity; present. [Pidgin English, from Amoy *kam sia*, from Mandarin Chinese *kan*[1] *hsieh*[4], to thank, gratitude : *kan*[3], to feel + *hsieh*[4], to thank, gratitude.]

cu·mu·late (kyōō′myə-lāt′) *tr.v.* **-lated, -lating, -lates.** To accumulate. [Latin *cumulāre*, from *cumulus*, heap. See **keu-**[3] in Appendix.*] —**cu′mu·la′tion** *n.*

cu·mu·la·tive (kyōō′myə-lā′tĭv, -yə-lə-tĭv) *adj.* 1. Increasing or enlarging by successive addition. 2. Acquired by or resulting from accumulation. 3. *Finance.* Of or pertaining to interest or a dividend that increases if not paid when due. 4. *Law.* Designating additional or supporting evidence. 5. *Statistics.* a. Of or pertaining to the sum of the frequencies of experimentally determined values of a random variable that are less than or equal to a specified value. b. Of or pertaining to experimental error that increases in magnitude with each successive measurement. —**cu′mu·la′tive·ly** *adv.*

cu·mu·li·form (kyōō′myə-lə-fôrm′) *adj. Meteorology.* Having the shape of a cumulus. [CUMUL(US) + -FORM.]

cu·mu·lo·nim·bus (kyōō′myə-lō-nĭm′bəs) *n., pl.* **-buses** or **-bi** (-bī′). *Meteorology.* An extremely dense, vertically developed cumulus with a relatively hazy outline and a glaciated top, usually producing heavy rains, thunderstorms, or hailstorms. [New Latin : CUMUL(US) + NIMBUS.]

cu·mu·lus (kyōō′myə-ləs) *n., pl.* **-li** (-lī′). 1. *Meteorology.* A dense, white, fluffy, flat-based cloud with a multiple rounded top and a well-defined outline, usually formed by the ascent of thermally unstable air masses. 2. A pile, mound, or heap. [New Latin, from Latin, heap, mass. See **keu-**[3] in Appendix.*] —**cu′mu·lous** *adj.*

Cu·nax·a (kyōō-năk′sə). A town of ancient Babylonia, about 90 miles northwest of Babylon; site of the defeat of the army of Cyrus the Younger of Persia by his brother (401 B.C.).

cunc·ta·tion (kŭngk′tā′shən) *n.* A delay. [Latin *cūnctātiō*, from *cūnctātus*, past participle of *cūnctārī*, to delay. See **konk-** in Appendix.*] —**cunc′ta′tive** *adj.* —**cunc′ta′tor** (-tā′tər) *n.*

cun·dum. Variant of **condom.**

cu·ne·al (kyōō′nē-əl) *adj.* Wedge-shaped. [New Latin *cuneālis*, from Latin *cuneus*, wedge. See **coin.**]

cu·ne·ate (kyōō′nē-ĭt, -āt′) *adj.* Also **cu·ne·at·ed** (-nē-ā′tĭd). Wedge-shaped. Said especially of leaves that are narrow and triangular, and taper toward the base. [Latin *cuneātus*, from *cuneus*, wedge. See **coin.**] —**cu′ne·ate′ly** *adv.*

cu·ne·i·form (kyōō′nē-ə-fôrm′, kyōō-nē′-) *adj.* 1. Wedge-shaped. 2. Designating: a. The wedge-shaped characters used in ancient Sumerian, Akkadian, Assyrian, Babylonian, and Persian writing. b. Documents or inscriptions written in such characters. 3. *Anatomy.* Denoting any of the three wedge-shaped bones in the tarsus of the foot. —*n.* 1. Cuneiform writing. 2. A cuneiform bone. [French *cunéiforme* : Latin *cuneus*, wedge (see **coin**) + -FORM.]

Cu·ne·ne (kōō-nā′nə). Also **Ku·ne·ne.** A river of Africa, rising in east-central Angola and flowing 700 miles first south and then west to the Atlantic, forming part of the border between Angola and South-West Africa on its western course.

Cun·ha (kōō′nyə), **Tristão da.** 1460?–1540? Portuguese navigator and explorer.

cun·ner (kŭn′ər) *n.* A marine fish, *Tautogolabrus adspersus*, of North American Atlantic waters. [Origin unknown.]

cun·ni·lin·gus (kŭn′ə-lĭng′gəs) *n.* Also **cun·ni·lin·c·tus** (-lĭngk′təs). Oral stimulation of the clitoris or vulva. [From Latin *cunnilingus*, "he who licks the vulva" : *cunnus*, vulva (see **skeu-** in Appendix*) + *lingere*, to lick (see **leigh-** in Appendix*).]

cun·ning (kŭn′ĭng) *adj.* 1. Shrewd; crafty; artful. 2. Executed with or exhibiting ingenuity. 3. *Regional.* Delicately pleasing; pretty; cute. —See Synonyms at **clever, sly.** —*n.* 1. Skill in deception; craftiness; guile. 2. Skill or adeptness in performance; expertness; adroitness; dexterity. [Middle English *conning*, perhaps from the present participle of *connen*, to know, Old English *cunnan*. See **gnō-** in Appendix.*] —**cun′ning·ly** *adv.* —**cun′ning·ness** *n.*

cunt (kŭnt) *n.* 1. *Vulgar.* The female pudendum. 2. *Vulgar Slang.* A woman regarded as a sexual object. [Middle English *cunte*, perhaps of Low German origin, akin to Middle Low German *kunte*. See **ku-** in Appendix.*]

cup (kŭp) *n.* 1. A small, open container, usually with a flat bottom and a handle, used for drinking. 2. Such a container and its contents. 3. *Abbr.* c. A measure of capacity equal to ½ pint, 8 ounces, or 16 tablespoons. 4. The bowl of a drinking vessel. 5. The chalice or the wine used in the celebration of the Eucharist. 6. An ornamented cup-shaped vessel given to commemorate an event or as a prize or trophy. 7. *Golf.* A hole or the metal container inside a hole. 8. Any of various beverages, usually combining wine, fruit, and spices. 9. Anything resembling a cup. 10. *Biology.* A cuplike structure or organ. 11. A lot or portion to be suffered or enjoyed. —*tr.v.* **cupped, cupping, cups.** 1. To place in or as in a cup. 2. To shape like a cup: *cup one's hand.* [Middle English *cuppe*, Old English *cuppe*, from Late Latin *cuppa*, drinking vessel. See **keu-**[2] in Appendix.*]

cup-bear·er (kŭp′bâr′ər) *n.* One who serves wine, as in a royal household.

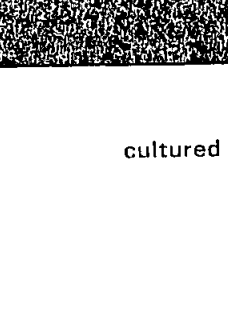
cup·board (kŭb′ərd) *n.* A closet or cabinet, usually with shelves for storing food, crockery, and the like.

cup-cake (kŭp′kāk′) *n.* A small cake baked in a cup-shaped container.

cu·pel (kyōō′pəl, kyōō-pĕl′) *n.* 1. A small, shallow, porous vessel used in assaying to separate precious metals from less valuable elements such as lead. 2. The bottom or receptacle in

cuneate
A cuneate leaf

cuneiform



cumin

EXHIBIT I

Riverside Unified School District

Educational Alternatives and Services

...hard L. Miller
...t Superintendent

Dr. William E. Ermert
Assistant Superintendent

April 13, 2009

Paula Higashi, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: *Student Records*
Test Claim 02-TC-34

Dear Ms. Higashi:

Please find below claimant's comments in response to the Draft Staff Analysis.
Claimant alleged in their test claim the following activities were state reimbursable mandate activities:

> Pursuant to Education Code Section 49062, establishing, maintaining and destroying pupil records, including health records according to regulations adopted by the State Board of Education.

Staff concluded the following activities were imposed by the Education Code:

1. Establish and maintain pupil records according to regulations adopted by the State Board of Education.

2. Include a pupil's health record in pupil's records.

Staff's recommendation to deny reimbursement for the above activities is incorrect as it pertains to the first activity. The basis of denial on the premise of a "pre-existing scheme" is speculative and lacks clarity. Unlike activity two that existed prior to the code sections included in the test claim, activity one should be reimbursable including the activity of destroying records.

The DSA (page 25) concludes, the following activities required by Education Code section 49068 exceed the provisions of FERPA, and are therefore, subject to Article XIII B, Section 6 of the California Constitution.

> Transfer a pupil's permanent record or a copy of the permanent record to the K-12 district or private school where the pupil intends to enroll upon the request of the K-12 district or private school where a pupil intends to transfer.

Educational Options Center 6401 Lincoln Avenue, Riverside, CA 92506 (951) 788-7187 FAX: (951) 778-5623

The above activity is not included as one of the specific new activities in the conclusion of the DSA (pages 55-56). It is well established in case law and previous Commission decisions, activities required by the Education Code are reimbursable state mandates when the activities exceed the requirements of federal law and meet the other requirements of a state reimbursable mandate.

Accordingly, claimant respectfully requests the following activity be approved as a reimbursable state mandate:

> Transfer a pupil's permanent record or a copy of the permanent record to the K-12 district or private school where the pupil intends to enroll upon the request of the K-12 district or private school where a pupil intends to transfer.

CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Respectfully submitted,

William E. Ermert

William E. Ermert, Ed.D.
Assistant Superintendent

PROOF OF SERVICE

Re: **Test Claim Comments**
Student Records Test Claim 02-TC-34

I am employed in the County of Riverside, State of California. I am over 18 years of age and not a party to the within entitled action; my business address is 6050 Industrial Avenue, Riverside, California, 92504.

On April 14, 2009, I served the foregoing document(s) described as: **Comments to Test Claim Draft Staff Analysis.**

On the person/parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope(s) with postage thereon fully prepaid in the United States Mail at Riverside, California, with first-class postage thereon fully prepaid.

SEE ATTACHED MAILING LIST

I declare, under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 14, 2009, in Riverside, California.

Naomi C. Dillon

Original List Date: 6/26/2003
Last Updated: 4/26/2007
List Print Date: 04/07/2009
Claim Number: 02-TC-34
Issue: Student Records

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849
Fax: (916) 327-0832

Mr. Jim Soland
Legislative Analyst's Office (B-29)
925 L Street, Suite 1000
Sacramento, CA 95814

Tel: (916) 319-8310
Fax: (916) 324-4281

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 12th Floor
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Michael H. Fine
Riverside Unified School District
Busines Services & Government Relations
6050 Industrial Avenue
Riverside, CA 92504

Tel:
Fax:

Ms. Bonnie Ann Dowd
Palomar Community College District
1140 West Mission Road
San Marcos, CA 92069-1487

Tel: (760) 744-1150
Fax: (760) 761-3511

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Fax:	(916) 727-1350 (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: Fax:	(951) 303-3034 (951) 303-6607
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2621 (866) 481-2682
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: Fax:	(916) 324-4728 (916) 319-0116
Mr. Steve Smith Steve Smith Enterprises, Inc. 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Mr. Michael Johnston Clovis Unified School District 1450 Herndon Ave Clovis, CA 93611-0599	Tel: Fax:	(559) 327-9000 (559) 327-9129
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Fax:	(916) 454-7310 (916) 454-7312
Mr. Erik Skinner California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Fax:	(916) 323-7007 (916) 322-4783
Mr. David E. Scribner Scribner & Smith, Inc. 2200 Sunrise Boulevard, Suite 220 Gold River, CA 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Mr. Joe Rombold School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: Fax:	(916) 669-5116 (888) 487-6441
Mr. David Cichella California School Management Group 3130-C Inland Empire Blvd.	Tel: Fax:	(209) 834-0556 (209) 834-0087

Ontario, CA 91764

Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 324-0256 (916) 323-6527
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-0328 (916) 323-9530
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 449-5252
Ms. Jolene Tollenaar MGT of America 455 Capitol Mall, Suite 600 Sacramento, CA 95814	Tel: Fax:	(916) 712-4490 (916) 290-0121
Mr. Keith B. Petersen SixTen & Associates 3841 North Freeway Blvd., Suite 170 Sacramento, CA 95834	Tel: Fax:	(916) 565-6104 (916) 564-6103

Art Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3126
San Diego, CA 92103