

MAINE STATE LEGISLATURE

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STATE OF MAINE

J.E.P. 0-34

Inter-Departmental Memorandum Date January 31, 1975

To Henry N. Berry, III

Dept. District Attorney

From Peter J. Goranites, Assistant

Dept. Attorney General

Subject Student Records

SYLLABUS:

The Family Rights and Privacy Act of 1974, as amended, does not provide authority for school officials to withhold student information from law enforcement officers.

FACTS:

Pursuant to 20 M.R.S.A. §805(4), law enforcement officers requested and were denied access to personal student information by school officials. The school officials claimed that under the Family Rights and Privacy Act of 1974, the school would lose its federal funding if it gave out such information without proper consent or pursuant to judicial process.

QUESTION:

Will a school jeopardize its federal funding under the Family Rights and Privacy Act of 1974 if school officials provide law enforcement officers personal information on students pursuant to 20 M.R.S.A. §805(4)? No.

REASONS:

On August 21, 1974, the President signed into law Public Law 93-380, which is referred to as the Family Rights and Privacy Act of 1974, Section 513 of the Education Amendments of 1974 (hereinafter Act). The Act amended the General Education Provisions Act (20 U.S.C. §1231 et seq.) by adding a new Section 438, entitled "The Protection of the Rights and Privacy of Parents and Students." The purpose of the Act was to assure parents and students access to student educational records and to protect the rights of privacy of parents and students by limiting the distribution and dissemination of their personal records without their consent. Of concern to us is the limitations placed on the distribution and dissemination of information contained in student records to law enforcement officers by Section 438(b)(1). Section 438(b)(1) reads as follows:

"No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any

other education institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b) (1) 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) 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."

The effect of Sec. 438(b) (1) is to withhold federal funds from designated educational agencies who have a policy or practice of furnishing personally identifiable information contained in personal school records to persons or agencies not listed in subsection (b) (1) without first complying with subsections (A) or (B). Law enforcement officers were not listed in subsection (b) (1). However, due to the narrow scope of Sec. 438(b) (1), Public Law 93-568 was passed and signed into law on December 31, 1974 to clarify and expand certain provisions of Section 438. (Presidential Documents, Vol. I, No. I, January 6, 1975). Sec. 438(b) (1) was amended by Section 2 of Public Law 93-568 to read as follows:

"(b) (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 students without the written consent of their parents to any individual, agency, or organization, other than to the following--

* * * *

(E) State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;" 40 Fed. Reg. 1208-1209, 1975

The intent of the amendment was to:

". . . permit the transmittal of personal information to State and local officials or authorities as required by State statute. It was not intended, in establishing a minimum Federal standard for record confidentiality and access, to preempt the State's authority in the field. Therefore, if a State law requires an educational official to transmit a specific piece of information about a student to a State or local official, . . . such as in Maine, . . . State law may be followed without securing a parent's specific consent." 120 Cong. Rec. 21489 (daily ed. Dec. 13, 1974).

In Maine, 20 M.R.S.A. §805 deals with student records and reads in relevant part as follows:

"No superintendent of schools, principal, teacher, employee, or governing board member of any public, private or parochial elementary or secondary school, shall permit access to any written records concerning any particular pupil enrolled in the school in any class to any person except under judicial process unless the person is one of the following:

* * *

4. Law enforcement officer. A state or local law enforcement officer, including a probation officer, parole officer or a member of a parole board seeking information in the course of his duties."

20 M.R.S.A. §805 was enacted by P.L. 1971, c. 611, §9-A, effective June 9, 1972, and falls within the exception created by Public Law 93-568, Sec. 2.

Although school authorities may have been justified in their concern over losing federal funds after the passage of the Family Rights and Privacy Act of 1974, the amendments to that Act by Public Law 93-568, effective December 31, 1974, clearly establishes that school officials may still comply with 20 M.R.S.A. §805(4) without jeopardizing their federal funds. Therefore, no conflict exists between federal and state law and school officials must still provide law enforcement officials with information pursuant to 20 M.R.S.A. §805(4).

cc: Commissioner of Educational
& Cultural Services