

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

3-20-80  
Student Records Vocational Education  
Vocational Education: Student Records  
20 MAR 1980

December 20, 1978

To: Whitney Newcomb, Director, Division of Programs Operations  
Department of Educational and Cultural Services

From: Waldemar G. Buschmann, Assistant Attorney General

Re: Secondary Vocational Student Record Processing

FACTS:

Section 161(a)(3)(B)<sup>1</sup> of the Vocational Education Act of 1963 ("Act") as amended by Section 202(a) of the "Education Amendments of 1976"<sup>2</sup> requires that:

"Any State receiving assistance under this Act shall cooperate with the Administrator in supplying the information required to be submitted by the Administrator and shall comply in its reports with the information elements and definitions developed jointly by the Administrator and Commissioner pursuant to paragraph (1). Each State shall submit this data to the Administrator in whatever form he requires; and, whenever possible, this reporting shall include reporting of data by labor market areas within the State."

The Act further specifies specific information on vocational students, programs, program completers and leavers, staff, facilities, expenditures, and other information "resulting from the evaluations required to be conducted by Section 112" of the Vocational Education Act of 1963.

The Department of Educational and Cultural Services has developed an information form for gathering the necessary data required by federal authorities on each vocational student in the State of Maine. (Appendix Form EF-V-116). The

---

<sup>1</sup>20 U.S.C. §2391(a)(3)(B).

<sup>2</sup>P.L. 94-482

data collected by the Department will be placed on a computer for recall, update and followup as required by the Act. Once the followup on students who leave or complete the program has been fulfilled, the computer file will be erased thereby destroying the information.

QUESTION:

Does the collection of the personally identifiable information requested on Form EF-V-116 without the written consent of students' parents, violate state or federal laws regarding students rights to privacy?

ANSWER:

No. The Family Educational Rights and Privacy Act of 1974 ("F.E.R.P.A.")<sup>3</sup> is the controlling federal legislation in this area and pursuant to 20 M.R.S.A. §805, it is also the controlling state law in this area.

Relative to the release of information F.E.R.P.A. states that

"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 sub-section (a)) of students without the written consent of their parents to any individual agency or organization, other than to the following - . . . (C) authorized representatives of . . . (iv) State Educational Authorities, under the conditions set forth in paragraph (3) of this sub-section." Section 438(b)(1) of F.E.R.P.A.<sup>4</sup>

Paragraph (3) specifically states that:

"Nothing contained in this section shall preclude authorized representatives of - - - (D) 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 program, or in connection with the enforcement of the federal legal requirements which relate to such programs: provided, that except when collection of personally identifiable

---

<sup>3</sup>20 U.S.C. §1232(g).

<sup>4</sup>20 U.S.C. §1232(g)(b)(1).

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."

Education records are defined in F.E.R.P.A. as including:

"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." Section 438(a)(4)(A) of F.E.R.P.A.<sup>5</sup>

Therefore, since there is a federal requirement that the state collect the information referred to in Form EF-V-116 it is my opinion that the collection of such personally identifiable student data does not conflict with state and federal laws which protect students rights to privacy. The Department is obligated to ensure the security of this data and to destroy the data once it is no longer needed for federal audit evaluation or the enforcement of other federal-legal requirements.

---

<sup>5</sup>20 U.S.C. §1232(g)(a)(4)(A).