

# MAINE STATE LEGISLATURE

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79-201

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November 29, 1979

To: Betty L. McLaughlin, Consultant, Guidance Services  
Educational & Cultural Services

From: Waldemar G. Buschmann, Assistant Attorney General

Re: Records of school administrative unit employees.

This is in response to the questions raised in your memo of September 19, 1979, regarding Public Law 1979, Chapter 320, "An Act to Clarify the Publication of School Records." (Copy attached)

Question 1 "Does the law apply to a) private schools or b) Cooperative Boards for secondary vocational education?"

Answer 1 Chapter 320 enacted 20 M.R.S.A. §807 which refers to school administrative units. By definition, a school administrative unit does not include a private school but is limited to "all municipal or quasi-municipal corporations responsible for operating or constructing public schools." (20 M.R.S.A. §3452.1) Also, since a vocational region "is declared to be a political subdivision within the meaning of Title 5, §1222, sub-§6 and a quasi-municipal corporation within the meaning of Title 30, §5053," the act would apply to the cooperative boards which govern the vocational regions.<sup>1</sup>

Question 2 "Are school administrative units required to compile requested directory information for school years prior to 1979-80? How about the compilation of information for former employees?"

Answer 2 20 M.R.S.A. §807.1 specifies that the information to be placed within the directory will include "regular and extracurricular duties and subjects taught since the commencement of employment by the administrative unit." (Emphasis supplied) Accordingly, school administrative units are expected to compile the requested directory information for years prior to 1979-80. There is nothing in the act which requires the administrative units to compile information for former employees.

<sup>1</sup>It is assumed that your reference to secondary vocational education refers to vocational regions which are responsible for providing secondary vocational education to many of the areas within the State of Maine.

Question 3 "Can school systems include information items on their directory information record form in excess of those items defined as 'directory information' in section 807 (1), i.e. social security number."

Answer 3 Were school systems to include social security numbers in the directory information they would run afoul of existing federal laws guaranteeing the privacy of their employees. It is my advice that only the material set forth in §807.1 be included in the directory information. However, if an administrative unit wishes to add additional information to that directory, then it should make sure that such information is not prohibited by any of the specified confidential areas set forth in §807.2 or by other federal or state laws.

Question 4 "Is the superintendent expected to require a written statement of request from an employee or former employee before granting him/her the right to review their personnel file? May the superintendent maintain a record of those individuals requesting information on an employee and reason for such request."

Answer 4 20 M.R.S.A. §808 states that "the superintendent of schools shall, upon written request from an employee or former employee, provide the employee or former employee or his duly authorized representative with an opportunity to review his personnel file . . ." The effect of this language is that the superintendent has no choice but to make that file available if he receives a written request from the employee to see his file. It does not prohibit the superintendent from allowing the employee to see the file on a less formal basis, simply that he must make it available if the request is in writing. The second part of your 4th question is somewhat confusing since it is not clear whether you are referring to the directory information part of the act or the confidential information part of the act. In either case, there is no requirement in the act that persons requesting information which they have a right to review be required to give a reason for wanting to see that material. Nor is there any prohibition against the superintendent keeping a list of individuals who wish to exercise their rights under Chapter 320. However, if a member of the public wishes to review the directory information file but refuses to identify himself, the school administrative unit would still be obliged to make that directory information available to such a person.

Question 5 "Does the right to 'review' a personnel file, under section 808, imply the right to make copies (or transcripts) of confidential information contained therein? If so, may the school unit charge for copying?"

Answer 5 Unlike the specific language set forth in 20 M.R.S.A. §807, which states that the directory information "shall be opened to inspection and copying by any member of the general public," section 808 simply states that an employee shall have "an opportunity to review his personnel file." It is my reaction that school systems should allow their employees to make copies of material within their personnel files despite the lack of a specific statement to that effect within section 808. Accordingly, the school administrative unit may charge a reasonable fee for the cost of copying the material in the employee's personnel file. This would be consistent with the approach which the legislature took in the Freedom of Access Law authorizing the governmental entity to charge a reasonable fee for the cost of copying public records. (1 M.R.S.A. §408) This is not intended to mean that the cost of the initial copy of material placed in the file, which is presumably made available to the employee at the time it is placed in the file, be charged to that employee.

Question 6 "Is there any prohibition against including a copy ' . . . a written record of a decision involving disciplinary action taken . . .' together with the 'confidential information' - as defined in section 807 (2) - in an individual employee's personnel file so long as the record is also included within the governing body's public records (see rec #4 on p 3 of DECS Info Letter)?"

Answer 6 No.

Question 7 "Can an employee legally refuse to provide answers to a request for a specific 'directory information' item(s)?"

Answer 7 There is nothing set forth in the act which requires the employees of a school administrative unit to provide the administrative unit with the information to be contained in the directory. It appears that most of that information should be on file within the administrative unit and that this should not present a problem.

Question 8 "Are any of the items on the DECS Staff Information form protected by the rights of privacy? Under what circumstances may DECS release staff information as on file?"

Answer 8 This question deals with material which is not covered by the act and, accordingly, it would be inappropriate to analyze that form in this opinion.

Question 9 "May the DECS Staff Information form serve as sufficient compliance of the law concerning directory information on the part of school units?"

Answer 9 No. Since the DECS Staff Information form (copy attached) requests some information which is privileged, it would be inappropriate to substitute it for a separate "directory information" form.

Question 10 "Just what is confidential information and does law limit inclusion of confidential information to those items as detailed in the law? Refer to #6 item in confidential information as how it relates to Disciplinary Action Information."

Answer 10 Confidential information is information which has been identified as being confidential by the Legislature or is recognized as such by the rules of evidence utilized by courts of law. Whether a specific item should be treated as confidential would depend upon the information contained within that item and would have to be determined on a case-by-case analysis. The Legislature specified in 20 M.R.S.A. §807.3 that "any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in sub-section 2." Accordingly, regardless of what is contained in the decision, the decision is a public record which shall be made available to the public upon request.

Question 11 "Clarification of implied terminology 'access', 'release', 'disclosure'."

Answer 11 An opinion cannot be rendered on the overly broad nature of this question. Rather, it would be essential that each term be analyzed within the context which it might be used.

Question 12 "Under review section, who can exercise rights on behalf of the personnel? Should school units specify who has access internally to personnel files, i.e. principals, curriculum supervisors, special education coordinators, etc.?"

Answer 12 The Legislature has specified that "the employee or former employee or his duly authorized representative" has the right to "review his personnel file." Therefore, any party which the employee has duly authorized to review his file has a right to review the employee's file. It is only logical that school administrative units should specify which members of the internal office staff should have access to the personnel files as part of their employment responsibilities.


Question 13 "Should school units formulate policy regarding this law?"

Answer 13 This is a policy question which does not call for a legal interpretation. Each school administrative unit should decide for itself whether it should adopt a policy regarding this law. There is no requirement in the law that the administrative units adopt policy for the implementation of the law.

I apologize for the lengthy delay in responding to your request; however, I trust that the above satisfactorily answers the questions you have raised.

Attachments

cc: Richard Redmond  
H. Sawin Millett, Jr.  
Elizabeth Boynton  
Elizabeth Mitchell  
Sandra Prescott

  
Waldemar G. Buschmann  
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