

SUBJECT: School district policies on federally mandated student information disclosure

COMMITTEE: Public Education — committee substitute recommended

VOTE: 6 ayes — Grusendorf, Oliveira, Dawson, Eissler, Hochberg, Madden
0 nays
3 absent — Branch, Dutton, Griggs

SENATE VOTE: On final passage, April 3 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Cathy Douglass, Texas Association of School Boards (TASB); Mike Sullivan, TASB/Abilene Independent School District
Against — None
On — David Anderson, Texas Education Agency

BACKGROUND: The Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. Sec. 1232g, as amended) of 1974 prohibits public disclosure of education records maintained by an educational agency or institution. The law applies to any public or private entity receiving federal education funding. FERPA broadly defines “education records” to include records, files, documents, and other materials containing information directly related to students. The law allows disclosure, however, of “directory information,” including students’ names, addresses, telephone numbers, electronic mail addresses, photographs, dates of birth, height and weight (for athletes), major fields of study, extra-curricular activities, degrees and awards, attendance dates, and other institutions recently attended. Institutions violating FERPA may lose federal funding.

Government Code, ch. 552 defines public information and generally requires disclosure, with various exceptions. Sec. 552.026 requires state educational institutions to release student information in conformity with FERPA. Education Code ch. 26 addresses parental rights and responsibilities.

DIGEST:

CSSB 448 would add Education Code, sec. 26.013 to require school districts to issue both explanations and notices concerning FERPA at the beginning of each school year or upon students' enrollment, if later. Each notice would contain the following statement in boldface type no smaller than 14-point:

“Certain information about district students is considered directory information and will be released to anyone who follows the procedures for requesting the information unless the parent or guardian objects to the release of the directory information about the student. If you do not want [insert name of school district] to disclose directory information from your child’s education records without your prior written consent, you must notify the district in writing by [insert date]. [Insert name of school district] has designated the following information as directory information: [Here a school district must include any directory information it chooses to designate as directory information for the district, such as a student’s name, address, telephone listing, electronic mail address, photograph, degrees, honors and awards received, date and place of birth, major field of study, dates of attendance, grade level, most recent educational institution attended, and participation in officially recognized activities and sports, and the weight and height of members of athletic teams.]”

Each notice also would contain a form, such as a check-off list, allowing parents to record objections to releasing all or specific categories of directory information, if district policies allowed category-specific objections. Parents of secondary school students would have to be able to object to releasing their children’s names, addresses, and telephone numbers to military recruiters or higher education institutions. Parents also would have to be able to consent to releasing category-specific directory information for limited school-sponsored purposes that districts specifically had identified and designated, such as student directories, yearbooks, or district publications. Each notice also would state that districts receiving federal funds would be required to provide military recruiters and higher education institutions, on request, with secondary students’ names, addresses, and telephone numbers unless parents had informed districts not to do so without their written consent.

School districts could designate any or all student information to be directory information, as defined by FERPA. Directory information under FERPA not designated as such by school districts would be excepted from disclosure

under the state open records law. Directory information designated for limited school-sponsored purposes, if any, otherwise would be confidential and could not be released.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003 and would apply beginning with the 2003-04 school year.

**SUPPORTERS
SAY:**

CSSB 448 would give school districts and parents more control over disclosure of personal student information.

Prior to 1974, colleges, schools, and other educational institutions maintained student records that sometimes contained inaccurate or damaging information. Parents did not have access to these records, some of which hindered students' academic progress or subsequent employment opportunities. To rectify this situation, Congress passed FERPA to allow parental access to some student information while keeping other data confidential. The law authorizes withholding federal funds from educational institutions that release education records, or personally identifiable data they contain, other than directory information, which has less legal protection. This exception for general publicity about students is to allow publication of student directories, yearbooks, athletic programs, and other materials.

FERPA allows school districts to designate which data they collect to be directory information but requires disclosure on request unless parents notify districts to withhold the information in the absence of written disclosure permission. Most school districts distribute notices and consent forms each year when school begins. Absent parental refusal, directory information is subject to disclosure regardless of who requests it. Texas attorney general opinions and open records decisions generally have held that student data categorized as directory information under FERPA is subject to disclosure under state law, regardless of whether districts have designated it as such.

Many parents are unaware of the law and do not see notices included in the myriad forms students bring home at the outset of each school year. Consequently, students are experiencing a wide variety of unwanted and unsolicited contacts, including modeling offers, prison inmate correspondence, sales visits, and payment demands for unordered

merchandise. Marketers, advertisers, and fund-raising organizations aside, this information could be used by pedophiles, stalkers, and non-custodial parents seeking to abduct their children from custodial spouses.

CSSB 448 would clarify that districts may designate what is directory information under FERPA. The bill would strengthen parental notification by replacing typical “fine print” notices with pre-written, easy-to-read explanations and checklist-style consent forms. This would provide districts with clearer guidance on what information to release and ensure that parents were involved in the decision-making process. The bill would not create additional paperwork for parents, nor would it increase costs for districts or workloads for teachers or school administrators.

**OPPONENTS
SAY:**

The bill would create another loophole preventing disclosure of public information. Government cannot protect citizens from every abuse of otherwise innocuous information they provide.

Texas’ open records law does not allow information to be withheld based on who requests it. Yet, making information confidential that was designated for limited school-sponsored purposes absent parental consent could serve to restrict information currently used for legitimate school-related objectives. For example, vendors who sell class rings or tutoring services might find it more difficult to contact students because of this bill.

CSSB 448 would mandate what notices and forms must look like and how they must read, removing any district discretion and further eroding local control of public education. Codifying federal law in state statutes could lead to inconsistencies if Congress amended or repealed FERPA.

NOTES:

The committee substitute specified that institutions of higher education would be entitled to student directory information unless parents objected.

During the 77th Legislature’s 2001 session, the Senate passed a similar bill, SB 1743 by Nelson, which died in the House Public Education Committee.