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ABSTRACT

Court decisions generally establish the right of students and parents to have access to confidential pupil records. In general, common law gives persons with a "real interest" (such as parents) the right to inspect student records. This doctrine is supported by the ruling in Marmo v. New York City Board of Education that an individual charged with a crime may inspect school records to determine the names and addresses of high school classmates, and by the decision in Creel v. Brennan et al. that an unsuccessful college applicant may view the materials submitted by his high school to ensure that he is not misrepresented by unfair or malicious evaluations. However, Einhorn et al. v. Maus et al. sustained high school officials' right to release to colleges and universities pupil records relating to nonacademic matters, and the court in People v. Russel ruled that college authorities may restrict public circulation of some school records. Wagner v. Redmond and King v. Ambellan established the right of school board members to inspect student records, where "sufficient interest" is shown. Personnel records appear to have a different status; the court in Board of Trustees of Calaveras Unified School District v. Leach ruled that they are not considered public, even to the personnel themselves. (JG)

NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS

# A Legal Memorandum

1201 Sixteenth Street, N.W. Washington, D.C. 20036



*September 1, 1971*

Concerning

## THE CONFIDENTIALITY OF PUPIL SCHOOL RECORDS

Privacy of school records, as protected under law, continues to be an important issue facing all educators. A resumé of relevant case law should enable principals and others to evaluate current procedures and to prepare, where necessary, new guidelines and standards relating to student records. The issue of student records centers on questions of what records do the schools collect, how extensive should this collection be, and who has the right of access.

Although the several cases included in this memorandum must be read in the light of the U.S. Constitution and pertinent state statutes, they illustrate a willingness of the judiciary to examine the procedures, regulations, and attitudes of our schools regarding pupil personnel records, and to hear and resolve those cases where rights to privacy are infringed. This emerging area of the law is far from settled, but certain judicial trends, consistent with the general challenge to the concept of "in loco parentis," are beginning to emerge. Although the right of the school to collect and maintain pupil personnel records remains unassailable, the right of a "party in interest," i.e. pupils and parents, to access is being more clearly established.

Although many legal issues emerge in cases regarding "public vs. private" character of pupil school records, the central question of whether student records are public has not been clearly decided by the courts. As a matter of fact, the term "quasi-public" has been employed by many courts to explain their legal status. Public records are generally defined as those being open to all with "lawful, proper, and legitimate interest," e.g., police, researchers, journalists, employers, etc.; and quasi-public records defined as those open only to "real parties in interest," e.g., pupil's parent, legal counsel, and attending physician. Limited statutory protection is given to student records in several states, but these statutes do not usually provide school administrators with guidance to determine whether students, parents, or even police should have informal access to the records.



### Parents and Student Records

A case, decided during the last decade, *Van Allen v. McCleary*, 211 N.Y.S. 2d. 501 (1961), is the most important of a closely associated series of New York cases establishing important rules for the confidentiality of student records.

School superintendents had been instructed by the state commissioner of education that "notes of personal, temporary or si .ilar nature" would not be considered part of the student's official record, and therefore need not be disclosed to the student or parent. The issue arose when a father employed a private physician on the advice of school officials to administer "psychological treatment" to his son. The physician with the father's approval asked for and was denied permission to examine all of the son's school records. The court in granting the father's request, stated:

> Petitioners rights, if any, stem not from his status as taxpayer seeking to review the records of a public corporation, but from his relationship with the school authorities as a parent who under compulsory education has delegated to them the educational authority over his child. Thus, the common law rule to the effect that when not detrimental to the public interest, the right to inspect records of a public nature exists as to persons who have sufficient interest in the subject matter, is a guide.
>
> ... (The court) needs no further citation of authority to recognize the obvious "interest" which a parent has in the school records of his child. We are, therefore, constrained to hold as a matter of law that the parent is entitled to inspect the records.

The supreme court for the State of New York upheld the *McCleary* rationale in *Johnson v. Board of Education of City of New York*, 220 N.Y.S. 2d 362 (1961), by deciding that "A parent, as a matter of law, was entitled to information contained in school records under proper safeguards, and such inspection would not be denied on the theory that the records were confidential."

An earlier attempt by a parent to obtain access to school records to discover addresses of his children in the custody of a former spouse raised a similar issue. In *Marquesano v. Board of Education*, 191 N.Y.S. 2d 713 (1959), the father was denied access by the court. The court ruled that he could offer no assurance that his children attended New York City Schools, and therefore the burden of disclosure was excessive. However, in another case, the same court granted access to records under similar facts and circumstances, commenting that the board had adopted regulations which effectively prevented access to school records relating to matrimonial disputes.

## Outsiders and Student Records

*Marmo v. New York City Board of Education*, 289 N.Y.S. 2d 51 (1968), concerned an individual charged with a crime. Needing the records to build a defense, he wished to compel the board of education to allow him to inspect school records for names and addresses of high school classmates. The Board's refusal was

based on confidentiality. The court ruled that a "sufficient interest" was shown, and that he should be allowed to inspect the records. The court in reaching its decision quoted the court in the matter of *Werfel v. Fitzgerald*, 260 N.Y.S. 2d 791 (1965):

> Where the defense of a person accused of a crime requires access to public records or even to records sealed from general examination, the right of inspection has a greater sanction and must be enforced.

## Students and Student Records

*Einhorn et al. v. Maus et al.*, 300 F. Supp. 1969 (1969), sustained, over the protests of students, the right of high school officials to make public to institutions of higher learning pupil records relating to nonacademic matters. Twelve graduating seniors sued to enjoin Pennsylvania high school officials from placing any notation upon the school record of any student who distributed literature or wore an arm band; indicating any student who ignored an order of the school authorities not to engage in such activities; or sending to colleges and universities any reference of same. The court denied the students' petition, making the following comment:

> School officials have the right and, we think, a *duty to record and to communicate true factual information* about their students to institutions of higher learning, for the purpose of giving to the latter an accurate and complete picture of applicants for admission.

Important for educators to note, however, is the decision in *Elder v. Anderson*, 23 Cal.Rptr. 48 (1962). The court ruled that a student could recover damages if a school improperly, and in violation of statutory directive, released information about him.

*People v. Russel*, 29 Cal. Rptr. 562 (1963), is a California case concerning forgery and false impersonation to obtain student records. The most important part of the decision for educators concerned the court's holding that "there is a reasonable basis for college authorities to restrict public circulation of school records...that a person who attends a public school might be injured by the promiscuous circulation of this information...[that] there remains a category of records in which the public as a whole has no interest."

## Confidentiality of Personnel Records

Personnel records appear to have a different status. In *Board of*

*Trustees of Calaveras Unified School District v. Leach*, 65 Cal. Rptr. 588 (1968), personnel records are not "public," even to the personnel themselves. The court, in holding that a grand jury may not compel the school district to open its personnel records, ruled:

> Further, the personnel records of the district are maintained as confidential files; it is common knowledge that such matters are among the most confidential and sensitive records kept by a private or public employer, and their use remains effective only so long as the confidence of the records, and the confidence of those who contribute to those records, are maintained. *It does not matter that here the employees themselves sought disclosure of the records* (emphasis added); the records are the property of and are in the custody and control of the district, not the employees.

School Board Members and Student Records

Two cases involving access to student records by school board members also bear on the confidentiality issue. *Wagner v. Redmond*, 127 So. 2d 275 (1960), considered the question of whether a member of a school board can compel the school superintendent to furnish him the names and addresses of pupils enrolled in certain schools. The court held that the superintendent could not refuse even though there was a rule of the school board forbidding the release of this information, and, furthermore, in spite of the advice of city police or FBI that such information should be kept secret. In another New York Supreme Court case, *King v. Ambellan*, 173 N.Y.S. 2d 98 (1958), a member of the board of education went to court to compel the superintendent of schools to make available for inspection certain school records and papers pertaining to students. The court, in upholding this demand, said:

> Where a teen-age program designed to help young people with special problems in education or social adjustment or both was put into effect by Board of Education and personnel was employed and was engaged in the program, a member of Board of Education, who was opposed to program and who desired to send letter expressing his opposition to parents of each child participating in program, was entitled to names of young people enrolled in project. The majority members of Board of Education could not by resolution restrict right of the opposing board member to inspect official records kept by Board of Education or its emplyees of business and affairs of school district.

## High School-College Relationships

In a widely known and still important decision, the long held assumption that communications between a high school and a college admissions office are a protected, privileged, and confidential matter was challenged, and rejected. In *Creel v. Brennan et al.* (The Bates College Case), Civ. Action 3572, Superior Court, Androscoggin County, Maine (1968), the court ruled that Bates College was compelled to reveal to a rejected applicant the "confidential" contents of his application for admission for use as evidence in a law suit. The plaintiff sued the Board of Education of the City of New Waterbury, Connecticut, alleging that high school authorities had submitted evaluations, which were neither fair nor honest, to Bates and other colleges. The classic conflict of interest is clearly illustrated by this case. The interest of the student in insuring that he is not misrepresented by malicious, dishonest or unfair evaluation must be weighed against the need for candid evaluation and dissemination of critical information between the institution and the evaluator. The court rejected the proposition that the information was privileged as a matter of public policy and ruled the information in possession of the Bates Admissions Office must be made available to a proper person with a real "interest," such as parents and the student.

## Conclusion

It is doubtful if pupil personnel records can be kept confidential from the pupil and parent if the issue is challenged in the courts. Generally, common law gives persons with "real interest" the right to inspection. This is particularly true in those states not having legislation establishing matters of confidentiality of student records.

Inasmuch as student records will increasingly become accessible to students and parents, information and statements made by school authorities can be the subject of defamation actions insofar as they relate to a student's acceptance to college, job, etc. The American Bar Association's Section of Individual Rights and Responsibilities has stated that "an institution might presently be enjoined from giving 'unreasonable' publicity to the private lives of its students, or otherwise held to account for an invasion of privacy," and makes the following suggestions:

> To minimize the risk of improper disclosures, academic records should be kept separate from disciplinary records. The conditions of access to each should be set forth in an explicit policy statement. Transcripts

> of academic records should contain only information about academic status. Information from disciplinary or counseling files should not be available to unauthorized persons within the institution or to any person outside the institution without the express consent of the student involved except under legal compulsion or in cases where the safety of persons or property is involved. No records should be kept which reflect political activities or beliefs of students. Special provision should be made to prevent misuse of old disciplinary records of former students. A student should have access to his records under reasonable circumstances. Administrative staff and faculty members should respect confidential information about students which they acquire in the course of their work. Students are likewise bound to respect the confidentiality of the files and records of faculty and administrators.

Certainly each school system should have a carefully developed policy regarding access to student records, a policy that will prevent unnecessary conflict and confusion in the event a demand is made for examination of school records.

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