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Bill Analysis

Legislative Service Commission

H.B. 510

127th General Assembly
(As Introduced)

Reps. Brady, Celeste, Foley, Letson, J. McGregor, Strahorn, B. Williams, Yuko

BILL SUMMARY

- Requires state institutions of higher education to designate their law enforcement and medical services units and their threat assessment teams as "school officials" for purposes of receiving student education records under the federal Family Educational Rights and Privacy Act.

CONTENT AND OPERATION

Designation of "school officials"

(R.C. 3345.43)

The bill requires each state institution of higher education to designate personnel of its law enforcement and medical services units, including mental health professionals,¹ and personnel assigned to their threat assessment teams, as "school officials" so that they may receive student education records, as authorized under the federal Family Educational Rights and Privacy Act (FERPA).² The bill also requires that each institution acknowledge, in the institution's required annual notice to students and parents about their rights under FERPA, that such personnel may receive student education records.

The bill applies to each state university, university branch, community college, state community college, and technical college and the Northeastern Ohio Universities College of Medicine.

¹ As used in the bill, a "mental health professional" is an individual who is licensed, certified, or registered under state law "to provide mental health services for compensation, remuneration, or other personal gain" (see R.C. 2305.51, not in the bill).

² 20 United States Code (U.S.C.) 1232g.

Background

FERPA generally

FERPA controls access to individual student records at all educational institutions that receive federal funding.³ Under FERPA, a student's parents or the student, if at least 18 years old or if attending a postsecondary institution, may inspect and review the student's education records and request corrections to those records. In addition, schools and institutions must have written permission from the student or parent to release information from a student's "education records," except for release to educational or law enforcement personnel for official purposes (see "**Education records**" below). The rights to inspect and control access to a student's information transfer from the student's parents to the student when the student reaches age 18 or when the student is attending a postsecondary institution. In either case, FERPA states that those rights, at that point and thereafter, belong only to the student.⁴

Education records

A student's "education records" include any information (other than directory information) related to the student that contains personally identifiable information and that is actually maintained by the educational institution.⁵ A school or institution may release a student's education records without consent to "school officials," including those of another school or institution in which the student seeks to enroll, as long as the officials have a "legitimate educational interest" in those records, which may include the "educational interests of the child."⁶ Even if a student's education records are released to another unit within a school or institution, such as a law enforcement or medical services unit as contemplated by the bill, FERPA regulations specifically state that education

³ A separate state law, R.C. 3319.321 (not in the bill), also provides specific requirements for Ohio's public primary and secondary schools. It also appears to have been applied to chartered nonpublic schools by rule of the State Board of Education. Generally, it implements the provisions of FERPA.

⁴ 20 U.S.C. 1232g(d).

⁵ A student's protected education records do not include a purely law enforcement record but may include an administrative disciplinary record. A student's education records also do not include a purely medical or psychological record that was not created for an educational purpose.

⁶ 20 U.S.C. 1232g(b)(1)(A) and (B); 34 Code of Federal Regulations (C.F.R.) 99.31(a)(1) and (2).

records and personally identifiable information contained in those records "do not lose their status as education records" while in the possession of a noneducational unit of the school or institution.⁷ Accordingly, those records may not be re-released by the noneducational unit to anyone else except as provided under FERPA.

Authority for release of a student's education records to outside law enforcement is generally limited to release in response to a subpoena or a court order, and then usually only if the school or institution makes a reasonable effort to notify the student or the student's parent, if the student is less than 18 years old and not enrolled in a postsecondary institution, to allow the opportunity to challenge the subpoena or order.⁸

Annual notice

Schools and institutions must provide an annual notice to students and parents regarding their rights under FERPA. In that notice, the school or institution must state "who constitutes a school official and what constitutes a legitimate educational interest."⁹

Directory information

Schools and institutions may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, each school or institution annually must notify students and parents as to what constitutes directory information and offer them an opportunity to withhold that directory information from release.¹⁰

COMMENT

Proposed federal rule changes

The U.S. Secretary of Education recently proposed changes to the administrative rules implementing FERPA. According to the Secretary's summary, the proposed changes, among other things, would clarify (1) permissible

⁷ 34 C.F.R. 99.8(c)(2).

⁸ 20 U.S.C. 1232g(b)(1)(J); 34 C.F.R. 99.31(a)(9).

⁹ 34 C.F.R. 99.7(a)(3)(iii).

¹⁰ 20 U.S.C. 1232g(a)(5).

disclosures of student information to parents, (2) conditions that apply to disclosures in health and safety emergencies, and (3) permissible disclosures of student identifiers as directory information. The public comment period on the proposed changes ends May 8, 2008. (See Federal Register, March 24, 2008 (Volume 73, Number 57), pp. 15573-15602.)

HISTORY

ACTION	DATE
Introduced	03-18-08

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