

Office of the Attorney General
State of North Dakota

Opinion No. 81-130

Date Issued: December 7, 1981

Requested by: Senator Jan S. Dykshoorn

--QUESTIONS PRESENTED--

I.

Whether student directory records are open for public inspection pursuant to North Dakota's Open Records Law.

II.

Whether a school board has any discretion, under federal or state law, in allowing the inspection of student directory records which are legally available for public inspection.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that student directory records are open for public inspection pursuant to North Dakota's Open Records Law so long as the prior notice requirements contained in 20 U.S.C. § 1232g(a)(5)(B) are followed.

II.

It is my further opinion that a school board has direction under federal law, but has no discretion under state law, in allowing the inspection of student directory records which are legally available for public inspection.

--ANALYSIS--

I.

North Dakota Open Record's Law, as found in Section 44-04-18 of the North Dakota Century Code, clearly indicates that, except as otherwise provided by law, all records of public or governmental bodies, boards, commissions, or agencies of the state or any of its political subdivisions are open for public inspection. As was state in a letter from this office to Pierce County State's Attorney Charles Orvik on February 27, 1980, the 'except as otherwise specifically provided by law' exception includes both state laws and

federal laws. Although there is no state law providing for the confidentiality of student directory records, federal law does provide for such confidentiality.

The Family Education and Privacy Act as enacted in 1974 defines and provides for the confidentiality of student directory information. Student directory information is defined in 20 U.S.C. § 1232g(a)(5)(a) as follows:

A student's name, address, telephone listing, date, and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

According to 20 U.S.C. § 1232g(b)(1), student directory information is confidential and shall not be released or open for public inspection unless the notice requirements of 20 U.S.C. § 1232g(a)(5)(B) are complied with. Those notice requirements are as follows:

Any educational agency or institution making public directory information shall give public notice of categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

Where a school district has not complied with these notice requirements, it should not release directory information from student records to any party, nor should it publish such information. To do so could jeopardize its entitlement to federal funds under the Family Education and Privacy Act.

In summary, as federal law provides for the confidentiality of student directory information, that confidentiality is carried forward and incorporated under North Dakota's Open Records Law. As federal law provides for the public inspection of student directory information and records where prior notice requirements are provided, those same requirements must be followed under state law in order to make those same records available for public inspection. Where a school board does not comply with the prior notice requirements of federal law, the student directory information is confidential and may not be released.

II.

As discussed above, student directory information is open for public inspection by federal law and state law so long as prior notice requirements are followed. North Dakota's Open Records Law does not provide any discretion to those public agencies, bodies, boards, and commissions who have public records available for public inspection. Therefore, under state law, there is no discretion given a school board as to who may

inspect what records for what reason where those records are legally available for public inspection. Again, the prior notice requirements of federal law must be complied with before the records become available for public inspection under state and federal law.

Federal law appears to provide for discretion within the school board as to the persons to whom such student directory information will be released. In 34 C.F.R. § 99.37, several provisions are found allowing for such discretion on the part of the educational agency or institution with custody of student directory information. While these provisions make it clear that schools may pick and choose to whom they wish to release such student directory information, state law provides for no discretion at all.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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