

Reg 4961



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 2, 1995

*Informal Opinion*

Mr. John E. Smalls  
Associate Commissioner  
S.C. Commission on Higher Education  
1333 Main Street, Suite 200  
Columbia, South Carolina 29201

Dear John:

You have requested the advice of this Office as to two matters. They are addressed separately below.

1. Whether the Commission may disclose that an individual student attended a college or university prior to enrolling at another public college as a purportedly first time freshman?

The Commission collects this information pursuant to the Commission on Higher Education Management Information System [CHEMIS].<sup>1</sup> Under this system, public institutions report student, course and facilities data to the Commission electronically. Under the student component, enrollment and completions data are reported. The system can track students across multiple institutions within the State.

As you know the Buckley Amendment or Family Education and Privacy Rights Law (20 U.S.C. §1232(g)) contains restrictions on the disclosure of data about students by educational agencies and institutions. Absent consent, Section B of this law provides that

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<sup>1</sup> This letter addresses only the release of information by the Commission. It does not address release of information to the Commission.

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federal funds shall not be available to education agencies or institutions which have a policy or permit release of education records except under several circumstances outlined therein.

Subsection (b)(1)(B) permits "disclosure to officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that this student's parents be notified of the transfer . . ." and provided that other conditions are met. This law does not define school so as to indicate expressly whether this term includes post-secondary institutions. Nevertheless, the reference in Part (b)(1)(A) to "other school officials" including, "...teachers within the educational institution or local educational agency..." indicates that this term does include post-secondary institutions.<sup>2</sup> Therefore, Part (b)(1)(B) should permit the release of this information by the Commission to an institution.

Subsection (b)(4)(B) states that ". . . personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student." Even if the Commission were a third party by its receipt of this information, disclosure does not appear to be barred. See note 1, supra. Construing this provision with the other parts of Section B and giving it a reasonable reading (see note 2, supra) indicates that this provision permits disclosure by third parties under circumstances when sub-section (b)(1) otherwise permits disclosure. Therefore, when Part (b)(1)(B) permits disclosure of the student information to institutions where students are seeking enrollment, then the Commission may release this information to another institution where the student is seeking or intending to enroll. This conclusion appears to be consistent with the provisions of Subsection (b)(1) for disclosure of information related to enrollment, applications for financial information, etc.

Another possible basis for release of the information is dependent upon whether it has been designated as "directory information" as defined in Subpart (a)(5)(A), which includes basic information about a student such as name, address, place of birth, etc. Subsection (b)(1) appears to permit disclosure provided that under Subpart (a)(5)(B), the agency making that information public

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<sup>2</sup> The Supreme Court has said that, in construing a statute, the language of the statute as a whole should be considered rather than an isolated phrase. Laurens County School Districts v. Cox, 308 S.C. 171, 417 S.E. 2d 560 (1992).

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has given public notice of the categories of information which it has designated as directory and otherwise follow the procedures therein. Therefore, if the information has designated it as directory, Subpart(b)(1) appears to permit its disclosure to another institution.

The above authority indicates that the Commission may make the disclosure in question; however, because this statute does not expressly address this particular release question, you may wish to contact the United States Department of Education to determine whether that agency can provide any additional assistance to you. I also note that, under sub-section (b)(1)(B), the student, if eighteen or older, should be notified of the release of information, receive a copy of the record if desired and have an opportunity for a hearing to contest the record. See also §1232g (d).<sup>3</sup>

2. Whether the Commission may release information about students to the Southern Regional Education Board [SREB] for purposes of research?

According to your information, the SREB has requested the last two years of completions data (degrees awarded) on students who receive degrees from the various public higher education institutions in South Carolina. You report that the data will assist the SREB in the South Carolina Educator Supply and Demand Project. You state that the SREB has said that the data will be used solely for research purposes and no data as to individuals will be revealed in a way that would permit the identification of the individual. Eight other states are participating in this project, and South Carolina would be the ninth.

This information appears to fall under the exemption for disclosure to "... organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of ...improving instruction ...." Subsection (b)(1)(F). According to information provided by your Office, the studies will relate to improving education, including instruction. Under this provision, the studies must be conducted in a manner that will not permit the personal identification of the students and their parents by persons other than the representatives of such organizations and the information must be destroyed when no longer needed for the purposes of the study. Therefore, the Commission should be able to release the information to SREB under the terms of this statute.

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<sup>3</sup> If the student is not eighteen, the parents should be notified.

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This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

Yours very truly,



J. Emory Smith, Jr.  
Assistant Deputy Attorney General

JESjr./fg