

Date of Hearing: June 13, 2018

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 1036 (Wilk) – As Amended April 3, 2018

SENATE VOTE: 38-0

SUBJECT: Local educational agencies: minutes of meetings of governing bodies: release of directory information and personal information of pupils and parents or guardians of pupils

SUMMARY: Prohibits a local education agency (LEA) from releasing the directory information or the personal information of a pupil or of a parent or guardian of a pupil in the minutes of a meeting of its governing body, except as specified. Specifically, **this bill:**

- 1) Prohibits a local education (LEA) from releasing the directory information or the personal information of a pupil or of a parent or guardian of a pupil in the minutes of a meeting of its governing body, except as required by judicial order or federal law or unless written permission has been provided by a pupil or parent or guardian who is 18 years of age or older.
- 2) Defines "directory information" to mean one or more of the following items: pupil's name, address, telephone number, date of birth, email address, 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 public or private school attended by the pupil.
- 3) Defines "governing body" to include charter school governing bodies, county boards of education, and school district governing boards.
- 4) Defines "local educational agency" to include charter schools, county offices of education, and school districts.
- 5) Defines "personal information" in include a person's address, telephone number, date of birth, and email address.

EXISTING LAW: State and federal law govern the terms and conditions under which information in pupils records may be disclosed. Specifically, existing law:

- 1) Requires LEAs to adopt a policy identifying those categories of directory information as defined in subdivision (c) of Section 49061 that may be released.
- 2) Prohibits the release of any pupil information to a private profitmaking entity other than employers, prospective employers, and representatives of the news media, including, but not limited to, newspapers, magazines, and radio and television stations.
- 3) Requires LEAs to provide an annual notice of what directory information will be released and to whom, and to give parents and guardians the opportunity to opt their pupils out of any release.

- 4) Prohibits the release of non-directory information without the prior written approval of a parent or guardian, except in the following cases:
 - a) Requires the release of records relevant to the legitimate educational interests of specified requesters, including:
 - i) School officials and employees of the districts, members of a school attendance review board and any volunteer aide (as specified), provided that the person has a legitimate educational interest to inspect a record;
 - ii) Officials and employees of other public schools or school systems where the pupil intends to or is directed to enroll;
 - iii) Other federal, state and local officials, as specified;
 - iv) Parents of a pupil 18 years of age or older who is a dependent;
 - v) A pupil 16 years of age or older or having completed the 10th grade who requests access;
 - vi) A district attorney, judge or probation officer, in relation to truancy proceedings;
 - vii) A district attorney's office for consideration against a parent for failure to comply with compulsory education laws;
 - viii) A probation officer, district attorney, or counsel of record for a minor, in relation to a criminal investigation or in regard to declaring a person a ward of the court or involving a violation of a condition of probation; and
 - ix) A county placing agency when acting as an authorized representative of a state or local educational agency.
 - b) Authorizes the release of records to the following:
 - i) Appropriate persons in connection with an emergency if the information is necessary to protect the health or safety of a pupil or other person;
 - ii) Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid;
 - iii) The county elections official for the identification of pupils who are eligible to register to vote;
 - iv) Accrediting associations in order to carry out accrediting functions;
 - v) Organizations conducting studies on behalf of educational agencies or institutions for the purpose of developing, validating or administering predictive tests, administering student aid programs, and improving instruction;
 - vi) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll; and

- vii) A contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: Information contained in pupil records is protected by state and federal law. Federal protections are contained in the Federal Educational Rights and Privacy Act (FERPA), and apply to any educational institution that receives federal funding. State law generally conforms to FERPA. In general, school districts may not disclose personally identifying information in a pupil's record without the prior written consent of the pupil's parent or guardian. However, directory information may be disclosed without prior written approval unless the parent or guardian has requested in advance that it not be. LEAs must inform parents and guardians of their right to opt out of disclosure at the beginning of each school year.

Reason for this bill. According to the author, “Current California and Federal laws allow for the publishing and release of personal information such as full names, home addresses, telephone numbers, et cetera by California school boards in the minutes of their board meetings. This release of information has led to troubling issues in our school communities. Primarily, the release of information, or potential thereof, can have the effect of suppressing participation and dissent. On controversial issues before the board, some students, parents, guardians or relatives feel the release of their home address for instance, presents the potential for harm or other harassment based on their testimony during the meeting. Additionally, it has been applied selectively with some persons’ information released and others’ not. This has led to the perception that the release of personal information may be employed in a manner leading to intimidation on the part of the individual school board during instances where they receive unfavorable testimony from members of the school community.”

The author's office provided a single example of this involving a constituent who raised concerns at a public board meeting about an assigned reading book that she believed contained racially offensive content. The name of the constituent and her daughter were printed in the minutes of the meeting. The constituent perceived that as a retaliatory action and felt intimidated.

Public meetings are public. Public meetings are, by definition and law, public. Members of the public that speak at a public government meeting—whether of a school board, city council, or legislative committee—are routinely asked to provide their names and affiliations for the record. Accordingly, there can be no expectation of anonymity.

At the same time, state and federal law give parents the right to opt out of the disclosure of all information in their students' records, including directory information. Specifically, LEAs are required to provide parents with an opt out signature form at the beginning of each school year. It is questionable whether this protection applies to parents and students who disclose their own names at a public meeting, even if a form was signed.

Given the nature of public meetings, excluding names from meeting minutes is not a guarantee of anonymity. The names of speakers can be obtained from other meeting participants and attendees, other written reports, and video or audio tape recordings.

Meeting minutes can disclose names for many reasons. The minutes of school board meetings may contain the names of all members of the public who publicly spoke, although according to the California School Boards Association (CSBA) that is rare. More typically, minutes may simply note that "x members of the public" spoke on a specific agenda item.

However, the names of parents or students may appear in meeting minutes for other reasons, such as to publicly recognize parents for volunteer activities or to identify and give positive recognition to students for extraordinary academic, athletic, or extracurricular achievements. The need to collect prior written approval may create enough of an administrative and recordkeeping hurdle to discourage such activities.

Accordingly, to be consistent with existing state and federal opt out provisions, and to achieve the objective of the author in a less administratively burdensome way, **staff recommends** that the bill be amended to provide an opt out, rather than an opt in requirement. Specifically, instead of requiring parents to provide prior written approval to include their names in meeting minutes (opt in), require LEAs to give them the opportunity to request that their names not be included in the minutes (opt out). According to CSBA, an opt out requirement would be less burdensome to administer while still giving parents the right to remain anonymous.

REGISTERED SUPPORT / OPPOSITION:

Support

None received

Opposition

None received

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