

LAW OFFICES OF
GIRARD, VINSON & TRUJILLO LLP

1121 L Street, Suite 510
Sacramento, CA 95814
Tel: 916.204.8007 Fax: 916.283.4061

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MEMORANDUM

Date: November 28, 2007

To: Sue Burr, Executive Director
Gaye Smoot, Assistant Executive Director
Mike Ricketts, Deputy Executive Director
CCSESA

From: Heather Edwards
Attorney at Law

Subject: *Valenzuela Implementation – FERPA Requirements*

ISSUE

May school districts provide to county superintendents a list of the names and/or student identifiers of students from the Classes of 2006 and 2007 that are eligible to receive CAHSEE intensive intervention services through the Valenzuela settlement?

CONCLUSION

Seemingly, school districts may provide to county superintendents a list of the names and/or student identifiers of students from the Classes of 2006 and 2007 that are eligible to receive CAHSEE intensive intervention services through the Valenzuela settlement. However, clarification from the attorneys representing the plaintiffs in the Valenzuela settlement may be helpful.

DISCUSSION

I. In General, FERPA Requires Prior Written Parental Consent Before Disclosure of Personally Identifiable Information.

The Family Education Rights and Privacy Act (FERPA) prohibits school districts from disclosing “personally identifiable information” contained in education records to any party without prior written parental consent. 20 U.S.C. 1232g.

“Personally identifiable information” includes but is not limited to:

- A student’s name,
- Address of the student or student’s family, and
- A personal identifier such as the student’s social security number or student number. 34 C.F.R. §99.3.

II. Disclosure Is Allowed Without Prior Written Parental Consent in Certain Circumstances.

There are a number of exceptions that allow school districts to disclose personally identifiable information without the need to obtain prior written parental consent that may be applicable here.

1. School Officials with a Legitimate Educational Interest

Disclosure is allowed to other school officials that the school district has determined to have a legitimate educational interest. 34 C.F.R. §99.31(a)(1).

Here, county superintendents would be considered “other school officials” that the school district may determine to have a legitimate educational interest in obtaining a list of the names and/or student identifiers of students from the Classes of 2006 and 2007 that are eligible to receive CAHSEE intensive intervention services through the Valenzuela settlement.

2. Representatives of Local Educational Authorities in Connection with Compliance with the Legal Requirements Related to State or Federal Education Programs.

Disclosure is allowed to authorized representatives of certain government agencies including local educational authorities in connection with an audit or evaluation of federal or state education programs, or enforcement of or compliance with the legal requirements which relate to those programs. However, any information collected by these agencies must be protected as to not permit personal identification of individuals to anyone other than these agencies, and must be destroyed when the purpose for having the information no longer exists. 34 C.F.R §§99.31(a)(3), 99.35.

Here, county superintendents would be considered “authorized representatives” of a local educational authority. Seemingly, the information sought by county superintendents would be in connection with complying with the legal requirements of a state education program, namely, the Valenzuela settlement legislation. However, county superintendents

would be required to protect this information from redisclosure, and destroy this information collected from districts once the information has served its purpose.

3. Directory Information

Disclosure is allowed of information the district has designated as “directory information”. “Directory information” means information contained in an education record that would not generally be considered harmful or an invasion of privacy if disclosed, and includes, but is not limited to a student’s name and address. 34 C.F.R. §99.3.

However, districts must have given public notice of the types of information the district has designated as directory information, parents’ right to refuse to let the district designate any or all of those types of information about the student as directory information, and the period of time within which a parent has to notify the district in writing that he/she does not want any or all of those types of information about the student designated as directory information. Also, districts may disclose directory information about *former* students without providing such notice. 34 C.F.R. §99.37.

Here, the type of information in which school districts designate as “directory information” may vary greatly from district to district, and may or may not include a student’s name or student identifier. Even if such information is designated as “directory information”, parents may “opt-out” from having their child’s information disclosed without their consent.