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ATTORNEY GENERAL
STATE OF ILLINOIS



July 26, 1991

FILE NO. 91-030

PUBLIC RECORDS AND INFORMATION:
Notice Prior to Disposition
of Student Records

Mr. Robert E. Ausbury
Chairman, Local Records Commission
Illinois State Archives
Springfield, Illinois 62756

Dear Mr. Ausbury:

I have your letter wherein you inquire regarding permissible methods for giving notice prior to the destruction of school student records, as required by section 4 of the Illinois School Student Records Act (Ill. Rev. Stat. 1989, ch. 122, par. 50-4). You have also inquired whether such records must be retained permanently if actual notice cannot be given to the person entitled to receive the notice. For the following reasons, it is my opinion that the required notice may be given by any means likely to reach the person entitled to

receive notice. Further, permanent retention of student records is not required if reasonable efforts to give notice have been made but the person entitled to notice cannot be located.

Section 4 of the Illinois School Student Records Act provides, in pertinent part:

" * * *

(e) Each school shall maintain student permanent records and the information contained therein for not less than 60 years after the student has transferred, graduated or otherwise permanently withdrawn from the school.

(f) No school shall maintain any student temporary record or the information contained therein beyond its period of usefulness to the student and the school, and in no case longer than 5 years after the student has transferred, graduated or otherwise permanently withdrawn from the school. * * *

* * *

(h) Before any school student record is destroyed or information deleted therefrom, the parent shall be given reasonable prior notice in accordance with regulations adopted by the State Board and an opportunity to copy the record and information proposed to be destroyed or deleted.

* * *

"

In addition, section 3 of the School Student Records Act (Ill. Rev. Stat. 1989, ch. 122, par. 50-3) provides:

"(a) The State Board shall issue regulations to govern the contents of school student records, to implement and assure compliance with the provisions of this Act and to prescribe appropriate procedures and forms for all administrative proceedings, notices and consents required or permitted under this Act. * * *

(b) The State Board, each local school board or other governing body and each school shall take reasonable measures to assure that all persons accorded rights or obligations under this Act are informed of such rights and obligations.

* * *

"

With respect to who is entitled to receive notice prior to the destruction of student records, subsection 2(g) of the School Student Records Act (Ill. Rev. Stat. 1989, ch. 122, par. 50-2(g)) provides:

"(g) 'Parent' means a person who is the natural parent of the student or other person who has the primary responsibility for the care and upbringing of the student. All rights and privileges accorded to a parent under this Act shall become exclusively those of the student upon his 18th birthday, graduation from secondary school, marriage or entry into military service, whichever occurs first. Such rights and privileges may also be exercised by the student at any time with respect to the student's permanent school record."

Thus, until a student has passed his or her 18th birthday, graduated from high school, married or entered military service, the student's parents are entitled to receive the required notice. Thereafter, the student or former student will be entitled to receive any notice which his or her parents would previously have been entitled to receive.

Subsection 4(h) of the School Student Records Act requires that parents be given "reasonable prior notice in accordance with regulations adopted by the State Board of Education" before any school student record is destroyed.

Therefore, the question of how notice may properly be given may be answered only with reference to the State Board's rules.

The State Board of Education's rules contain two notice requirements with respect to the destruction of either temporary or permanent student records. The first requirement is that a school notify the student and the parents of their rights under the School Student Records Act upon the student's initial enrollment in, or transfer to, the school; such notification must include the school's schedule for reviewing and destroying school student records and advise of the right to copy records proposed to be destroyed. (23 Ill. Adm. Code § 375.30 (Supp. 1987).) This rule further provides that:

" * * *

(c) This notification may be delivered by any means likely to reach the parents, including direct mail, parent-teacher conferences, delivery by the student to the parent, or incorporated in a 'parent-student' handbook or other informational brochure for students and parents disseminated by the school.

* * *

"

The Board's rules also provide for a second notice:

" * * *

(c) Upon graduation, transfer or permanent withdrawal of a student from a school, the school shall notify the parents and the student of the destruction schedule for the student permanent record and the student temporary record and of the right to request a copy of such records at any time prior to their destruction. Notification must consist of the following: date of notification, parent name, name of records

custodian, name of student and the scheduled destruction date of temporary and permanent records.

* * *

23 Ill. Adm. Code § 375.40 (Supp. 1987). "

Although 23 Ill. Admin. Code § 375.40 describes the contents of the notice and the time at which it is to be given, it does not, in contrast to 23 Ill. Admin. Code § 375.30, prescribe the manner in which such notice is to be given. Although 23 Ill. Admin. Code § 375.30 is not, by its terms, applicable to notices required under 23 Ill. Admin. Code § 375.40(c), the former provides guidance regarding what may be considered to be reasonable notice under the latter. 23 Ill. Admin. Code § 375.30(c) allows the notice of rights to be delivered by any means likely to reach the person entitled to notice, including direct mail, conferences, personal delivery or as part of a handbook or informational brochure. Although the handbook or informational brochure method would not appear to be an appropriate method for giving notice under 23 Ill. Admin. Code § 375.40, it is my opinion that any of the other methods specified, or any other method which is reasonably calculated to provide actual notice, would be permissible.

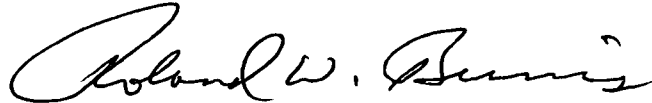
You have also inquired whether student records must be retained permanently if actual notice cannot be given to the person entitled thereto, either because the recipient's whereabouts are unknown or because he or she has died. Pursuant to statute, schools must maintain student permanent records for at

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least 60 years after the student has left the school, and they may not retain student temporary records for longer than five years after the student has left school. Subsection 4(h) of the School Student Records Act requires that persons entitled to notice be given prior "reasonable notice" of the destruction of student records and an opportunity to copy the records; it does not, however, predicate the destruction of records upon the actual receipt of notice in every case. If the whereabouts of the person entitled to notice are unknown, the school should make all reasonable efforts to locate and notify that person as may be warranted in the particular circumstances. Where such efforts fail, notice by publication may be the only reasonable manner of giving notice available.

Once a school's obligation to give reasonable notice under the School Student Records Act has been met, it is my opinion that the records may be disposed of as authorized under the Local Records Act (Ill. Rev. Stat. 1989, ch. 116, par. 43.101 et seq.; see 1983 Ill. Att'y Gen. Op. 60), notwithstanding the inability of the school to give actual notice to the parents.

Respectfully,

A handwritten signature in cursive script, reading "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL