

**N.D.A.G. Letter to Manbeck (March 13, 1990)**

March 13, 1990

Mr. Douglas G. Manbeck  
Nelson County State's Attorney  
P.O. Box 428  
Lakota, ND 58344

Dear Mr. Manbeck:

Thank you for your December 28, 1989, letter concerning a public school's posting of a restricted privileges list or a deficiency list.

You state in your letter that a high school posts a list naming students who, in some way, have not lived up to the expectations of the teacher who placed them on the list. Once on the list, the students' use of certain school facilities is restricted. You ask whether the public posting of this list violates any state or federal statute or regulation.

The posting of such a list does not violate any North Dakota statute or regulation. It may, however, jeopardize the receipt of federal funds pursuant to the Family Educational and Privacy Rights Act, 20 U.S.C. § 1232g (1988), and the regulations promulgated pursuant to that statute, 34 C.F.R. Part 99 (1988). I have enclosed copies of this statute and the regulations for your reference.

The federal statute states:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization, other than to the following .

20 U.S.C. § 1232g(b)(1) (1988). Thus, educational records may be released, without the parents' written consent, to only a limited number of individuals, agencies, or organizations, none of which appear to apply in this particular situation. Apart from this limited release, this statute allows the release of personally identifiable information contained in educational records only with the parents' written consent or, in the case of a student which is eighteen years of age or older, written consent from the student. 20 U.S.C. § 1232g(d) (1988).

The definitions of both directory information and personally identifiable information include the student's name. See 20 U.S.C. § 1232g(a)(5)(A) (1988); 34 C.F.R. § 99.3 (1988). Directory information, however, includes only that information "which would not generally

be considered harmful or an invasion of privacy if disclosed." See 34 C.F.R. § 99.3 (1988).

You indicated in your letter that the appearance of a student's name on a restricted privileges list or a deficiency list indicates that the student is receiving lower than normal grades or has behaved inappropriately. Information indicating that a student is receiving low grades or has behaved inappropriately is information which generally would be considered "harmful or an invasion of privacy if disclosed." *Id.* Thus, the release of student's name on a restricted privileges list or a deficiency list constitutes the release, not of directory information, but of personally identifiable information.

In answer to your question, the posting of a restricted privileges list or a deficiency list may jeopardize the receipt of federal funds pursuant to federal statute and regulations. The release of students' names in this manner appears to constitute the release of personally identifiable information which generally would be considered "harmful or an invasion of privacy if disclosed." *Id.* The release of such information is prohibited by 20 U.S.C. § 1232g(b)(1) (1988), unless the written consent of the parents (or of the student, if the student is eighteen years of age or older) is first obtained.

I hope this information will be helpful to you.

Sincerely,

Nicholas Spaeth

dfm  
Enclosures