



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 18, 1976

ATTORNEY GENERAL OPINION NO. 76-66

Mr. Max Bickford
Executive Officer
Kansas Board of Regents
Suite 1416 - Merchants National
Bank Tower
Topeka, Kansas 66612

Re: Colleges and Universities--Records--Access

Synopsis: There is no conflict between the Kansas public records law, K.S.A. 45-201, and the Family Educational Rights and Privacy Act of 1974, commonly known as the Buckley Amendment, as applied to records maintained by institutions under the jurisdiction of the State Board of Regents, for the reason that no state law requires the keeping and maintenance of records regarding students within the ambit of the federal act.

* * *

Dear Mr. Bickford:

You request my opinion upon a question raised by the chairperson of the Student Advisory Committee of the State Board of Regents, concerning a possible conflict between the Kansas open records law, K.S.A. 45-201, and provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § 1232g, commonly known as the Buckley Amendment.

Title 20, U.S.C.A. § 1232g(a)(1)(A) provides thus:

"No funds shall be made available under any applicable program to any educational

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agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution . . . the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made."

Under subsection § 1232g(d),

"For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student."

Subsection (b)(1) provides in pertinent part that

"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 education records (or personally identifiable information other than directory information . . . of students without the written consent of their parents to any individual, agency, or organization, other than to the following"

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Nine categories of persons, agencies and kinds of access are enumerated which are permissible without the written consent of the student, in the case of institutions of higher education.


The question which is raised is whether these provisions conflict with the Kansas open record law, K.S.A. 45-201, which provides in pertinent part thus:

"All official public records of the state, counties, municipalities, townships, school districts, commissions . . . which records by law are required to be kept and maintained except those of the juvenile court . . . , adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen." [Emphasis supplied.]

We have consistently concluded that the statute applies only to those records specifically within its scope, *i.e.*, to only those "records [which] by law are required to be kept and maintained." I find no state laws which require that records be kept and maintained concerning students in educational institutions under the jurisdiction of the State Board of Regents. The records to which the Buckley Amendment applies, for example, includes, but are not limited to, identifying data, records of academic work, level of achievement, grades and standardized achievement test scores, attendance data, scores on standardized intelligence, aptitude and psychological tests, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. No state law requires the keeping of such records, and hence, public access to such records so as to conflict with the provisions of the so-called Buckley Amendment.

In short, to respond directly to the question, there is no conflict between 20 U.S.C.A. § 1232g, and the state public records law, K.S.A. 45-201, for the reason that there is no state law which requires the keeping and maintenance, and hence public inspection, of records which are within the scope of the Buckley Amendment.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj