



Advisory Opinion 16-004

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2015). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

John M. Colosimo, attorney for Independent School District 706, Virginia, requested an advisory opinion regarding access to certain data the District maintains.

The District provided the following summary of the facts:

AFSCME Local 85 is the exclusive representative for all non-licensed paraprofessionals working with special education students and teachers to assist in providing services to meet the needs of students with disabilities in accordance with the students' IEP [Individualized Education Plan].

For many years, the practice in the school district had been to allow and permit paraprofessionals the opportunity to bid on a student and assigned teacher to whom services would be provided. Since the level of service provided each disabled student may differ and require different levels and hours of work, the paraprofessionals would be given the opportunity to select their own assignment based on seniority. In the last contract negotiations, the contract language was changed allowing and entitling paraprofessionals to the following information in conjunction with this bid or bumping process...title, building, scheduled time, days of work, hours per week, grade level and case manager.

According to the District, a case manager is a "special education teacher who provides services to students who have an IEP. The case manager supervises the work of support staff (paraprofessionals) and implements the IEP."

Issues:

Based on the opinion request, the Commissioner agreed to address the following issue:

Pursuant to Minnesota Statutes, Chapter 13, and federal law, would Independent School District 706, Virginia, disclose private educational data if it included the names and other data related to individual case managers in a job posting to District paraprofessionals bidding for assignments?

Discussion:

Data about students are governed by both Minnesota and federal law. Minnesota Statutes, section 13.32, classifies data relating to students, and incorporates by reference much of the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and its implementing regulations, 34 C.F.R. Part 99.

Subject to limited exceptions, data about students and their parents are private data on individuals. Minnesota Statutes, section 13.02, subdivision 5, defines “data on individuals” as, “all government data in which any individual is or can be identified as the subject of that data”.... Also, according to Minnesota Rules part 1205.0200, subp 4(f), “all data, in whatever form it is maintained, is ‘data on individuals’ if it can in any way identify any particular individual.”

In addition, “personally identifiable information” is defined in the federal regulations implementing FERPA as, “[o]ther information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. (34 CFR Part 99.3(f))

To address the issue, the Commissioner reviewed information from the Family Policy Compliance Office (FPCO) of the United States Department of Education. The FPCO provides technical assistance to schools, including providing oral and written interpretations of FERPA.

In a 2014 letter to the University of North Carolina at Chapel Hill, FPCO wrote:

Further, even if the University removed the students’ names and other direct identifiers from the spreadsheet and disclosed the other requested information, it appears based on the information you’ve provided that disclosing this information would be identifiable to some students. The University is in the best position to make that determination. A student’s identity may be personally identifiable, even after removal or redaction of nominally identifying information from student-level records.

The Commissioner has issued several advisory opinions that discuss circumstances in which the combination of certain data elements may uniquely identify an individual. Advisory Opinion 07-001:

In her request to the District, the newspaper reporter apparently asked for four separate pieces of information related to a hazing incident: the nature of the alleged hazing, the number of students disciplined, the particular athletic team involved, and the disciplinary action taken. Regarding the nature of the alleged hazing, it does not appear this is the type of data the release of which would identify any of the involved students. Therefore, such data are public and the District should have released the information.

However, the classification of the remaining information sought by the reporter may be more complicated. If, by stating the number of students disciplined and/or the particular athletic team involved and/or the type of discipline imposed, the District would, in effect,

be identifying an individual student or students, the District cannot release the information.

See also Advisory Opinions 12-014, 07-004, 07-001, 05-022, 02-037, 01-053, 97-028, and 97-026.

Private educational data may be disclosed to “individuals within the entity whose work assignments reasonably require access.” (See Minnesota Rules, section 1205.0400.) The corresponding language in FERPA’s regulations states that data can be disclosed without consent if, “[t]he disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.” (See 34 C.F.R. § 99.31(a)(1).)

FERPA does not define “legitimate educational interest;” it is a duty of school districts to make those interpretations. The FPCO provides guidance in its *Model Notification of Rights for Elementary and Secondary Schools*:

...One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the School has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility....

According to the District:

Since each case worker works only with certain identified disabled students, it is the school district’s concern that this practice and contract language may violate state and federal law by allowing a paraprofessional to obtain personally identifiable information of the student and the student’s disability before the paraprofessional has a legitimate educational interest in receiving that information.

Here, the paraprofessionals are able to ascertain and determine the disability of a student, if not the student himself/herself, by know [sic] the name and identity of the special education case manager. The case managers work with small groups of students usually with the same or similar disability, so that a para could easily determine the disability of a student with whom he/she may want to be assigned before any assignment has been made and before the para has a legitimate educational interest to access that data or information. In a smaller District like Virginia the paraprofessionals all know who worked with disabled students from previous years and which students are assigned to which case managers. What then happens is that the para is able [sic] self-assign to a student who may have fewer needs requiring less para time and effort, rather than the assignment being made by District administration and special education supervisors based upon whom they feel is best suited to meet the needs of the student.

Since the legitimate educational interest only applies to school district employees and officials after an assignment has been made, the paraprofessionals would not be entitled to the case manager information and that which naturally flows from knowing that information until after an assignment has been made.

34 C.F.R. § 99.7(a)(3)(iii) states that if a district has a policy of disclosing records under § 99.31(a)(1), the district must include in its annual notification to parents “a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.” (For an in-depth discussion of the meaning of “school official” and “legitimate educational interest,” see Advisory Opinion 05-022.)

According to the District, its bidding process allows paraprofessionals access to personally identifiable information about students and their disabilities without parental consent and “before the paraprofessional has a legitimate educational interest in receiving that information.” The District stated, “[n]either this District nor, to my knowledge, any other District in this area have identified their employees as public officials for purposes of allowing them access to private educational data.”

Here, as the District states, it has not identified paraprofessionals as school officials with a legitimate interest in receiving private educational data during the bidding process. For this reason, and based on guidance from the FPCO and prior advisory opinions, at the time paraprofessionals bid, they have not yet been assigned to work with the students and therefore do not yet have a legitimate educational interest in private data about the students and their disabilities, as is required under federal law. In addition, according to section 13.32, the paraprofessionals may have access to private educational data about students only if they have a work assignment that requires it, which they would not have during a bidding process. Accordingly, the District must remove the case managers’ names and related data from the job postings.

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issue raised is as follows:

Pursuant to Minnesota Statutes, Chapter 13, and federal law, Independent School District 706, Virginia, would improperly disclose private educational data if it included the names and other data related to individual case managers in a job posting to District paraprofessionals bidding for assignments.



Matthew Massman
Commissioner
June 29, 2016