



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

May 3, 2013

*Delivered via Electronic and Statehouse Mail*

Tom Luna  
Superintendent of Public Instruction  
STATE DEPARTMENT OF EDUCATION  
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RE: Parental Consent for Student Data in the State Longitudinal Data System  
and  
School District Compliance with State Academic Standards

Dear Superintendent Luna:

This letter is in response to your request of April 25, 2013, for a written legal analysis from this office on the following questions:

- 1. Can a parent refuse to allow their child to be included in the state's longitudinal data system?*
- 2. Can a district refuse to implement academic standards set by the state of Idaho?*

With respect to the state's longitudinal data system (SLDS), this analysis presupposes the student information included in the SLDS is collected for purposes of auditing and/or evaluating various state and federal programs administered by the State Department of Education (SDE), or the State Board of Education (SBOE). With respect to Idaho's academic standards, there are no relevant presuppositions for purposes of this analysis.

**1. Parents do not have the authority to prevent public school districts from entering student information in the SLDS for purposes of auditing or evaluating state or federal programs.<sup>1</sup>**

The Family Educational Rights and Privacy Act (FERPA) is federal law that, among other things, requires state education agencies and institutions<sup>2</sup> to protect personally identifiable information in student education records. 20 U.S.C. § 1232g(a) and (b). FERPA specifically allows educational agencies or institutions to disclose personally identifiable student information to state and local educational authorities, without parental consent. 34 C.F.R. §§ 99.31(a)(3)(iv). Specifically, FERPA allows educational agencies or institutions to disclose personally identifiable student information to state and local educational authorities, without parental consent, so long as the disclosure is “in connection with an audit or evaluation of Federal or State supported education programs”. 34 C.F.R. §§ 99.31 and 99.35. Notably, FERPA defines personally identifiable information to include:

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth and mother's maiden name;
- (f) Other 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; or

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<sup>1</sup> For purposes of this analysis, the term “parent” includes legal guardians.

<sup>2</sup> Under FERPA, an educational agency or institution includes any public or private agency or institution receiving federal funds for any education program. 34 C.F.R. §§99.1 and 99.3. All Idaho public schools, including charter schools, meet the definition of an educational agency or institution.

- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

34 C.F.R. § 99.3. As stated, this analysis presupposes that the student information included in the SLDS is collected for purposes of auditing and/or evaluating various state and federal programs administered by the SDE or SBOE. Thus, so long as the student information included in the SLDS is collected for purposes of auditing or evaluating state or federal programs, parents have no authority under FERPA, or any other federal or state law, to prevent school districts from entering such information in the SLDS.

**2. Public school districts cannot refuse to implement the minimum academic standards established by the State Board of Education.**

The Idaho Constitution provides "... it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools. Article IX, Section 1. The Idaho Constitution also provides that the "general supervision of the state education institutions **and public school system of the state of Idaho**, shall be vested in the state board of education". Article IX, Section 2 (emphasis added).<sup>3</sup> As part of its supervision of public schools, the SBOE is required to "prescribe the minimum courses to be taught in all public elementary and secondary schools, and shall cause to be prepared and issued, such syllabi, study guides and other instructional aids as the board shall from time to time deem necessary". I.C. § 33-118. Additionally, the SBOE is required to promulgate rules "to establish a thorough system of public schools with uniformity as required by the constitution..." I.C. § 33-1612.

Of the various rules promulgated by the SBOE, the dispositive rule for purposes of this analysis provides in pertinent part as follows:

The standards set forth in Section 004 of this rule [08.02.03.004] are state content standards that **shall be the minimum standards used by every school district in the state in order to establish a level of academic content necessary to graduate from Idaho's public schools**. Each school district may set standards more rigorous than these state content standards but **no district shall use any standards less rigorous than those set forth in these Thoroughness rules**.

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<sup>3</sup> See also Idaho Code § 33-116 ("All school districts in Idaho, including specially chartered school districts, shall be under the supervision and control of the state board").

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IDAPA 08.02.03.200 (emphasis added). Consequently, public school districts cannot refuse to implement the minimum standards established by the SBOE, but may go beyond such established minimums if the district desires to establish a more rigorous set of standards.

I hope that you find this analysis helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew J. Snook". The signature is fluid and cursive, with a large initial "A" and "S".

ANDREW J. SNOOK  
Deputy Attorney General

cc: Luci Willits, SDE Chief of Staff (via email)