

**LETTER OPINION**  
**95-L-181**

July 31, 1995

Mr. Larry Quast  
Mercer County State's Attorney  
P.O. Box 39  
Stanton, ND 58571-0039

Dear Mr. Quast:

Thank you for your letter asking about a parent's desire to remove a police report on a juvenile student from the student's school record. Your first question is:

Does Section 27-20-52 apply to the information in the school record of a child?

N.D.C.C. § 27-20-52 states:

Law enforcement records and files concerning a child must be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files may not be open to public inspection or their contents disclosed to the public; but inspection of the records and files is permitted by:

1. A juvenile court having the child before it in any proceeding;
2. Counsel for a party to the proceeding;
3. The officers of public institutions or agencies to whom the child is committed;
4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
5. A court in which he is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole or pardon board in considering his parole or

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discharge or in exercising supervision over him; and

6. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 54-23.4.

This section does not apply to school records, but rather to records held by law enforcement. The section strictly limits who may inspect law enforcement records on a child. Neither a school district nor school employees are among those who may inspect the records absent a court order. You did not indicate any court-ordered release of the report. The law enforcement record (police report) on a child in question was, thus, apparently erroneously released to the school. See Letter from Deputy Attorney General Calvin N. Rolfson to Brian D. Neugebauer (January 31, 1983).

Your second question is:

What authority does a parent have to require or even request that the information contained in a student's record which is factually accurate be removed?

North Dakota statutes do not deal with student school records other than to provide that school records are open records, "except as otherwise provided by law." N.D.C.C. § 15-29-10. I have previously determined that the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, is a specific exception to the open records law. (N.D.C.C. §§ 15-29-10 and 44-04-18.) 1994 N.D. Op. Att'y Gen. 118-120.

In addition to limiting access to educational records of students (under the penalty of the loss of federal funds to the school), FERPA provides parents of students who attend schools with rights to inspect and review their child's educational records and with an opportunity for a hearing before the school to challenge the content of their child's educational record. FERPA provides:

No funds shall be made available under any applicable program to any educational 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, as the case may be, the right to inspect and review the education records of their children. If any material or

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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.

. . . .

No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

20 U.S.C.A. § 1232g(a)(1)(A) and (a)(2) (1995).

Therefore, if the school district on whose behalf you inquire enjoys the benefits of federal funds, the FERPA requirements apply. In the circumstances which you raise, it is my opinion that the police report, which apparently was erroneously placed in the student's school records, may be removed from the record without the necessity of a FERPA challenge.

Under certain circumstances a law enforcement agency is required to disclose information to school officials. See N.D.C.C. § 15-21.1-07, providing notice be given the school principal when law enforcement has probable cause to believe a student violated N.D.C.C. §§ 5-01-08, 19-03.1-23, 39-08-01, or 39-08-18. This opinion does not apply to records which were submitted to a school pursuant to this statute.

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Your third question is:

Does the school district have the authority to include police investigation reports that pertain to actions of that juvenile which he committed on school property during the regular school day? If not, is the school liable to the victims of a student's violence, student's assault and injury to another student if there is nothing in the offending student file, to warn the faculty or staff of this student's pertinacity to violence?

As noted above, inspection of law enforcement records and files on children is strictly limited. It is therefore unclear how or why a police report on a juvenile student was ever copied and released into the possession of a school district. Concerning school district liability for actions involving the supervision of pupils, the general rule is:

With respect to liability for injuries due to negligence, it is the duty of school authorities, especially under statutes so providing, to supervise the conduct of students and to provide and enforce such rules and regulations as are necessary to their protection.

A school authority whose officers or employees negligently fail to provide the required supervision is liable for injuries resulting from such failure, where the authority is liable for the negligence of its agents or employees generally.

. . . .

A school authority may be liable for failure to adequately supervise where it has actual or constructive knowledge of the risk of injury.

78 C.J.S. Schools and School Districts §§ 464 and 465, p. 55-57 (1995) (footnotes omitted).

While no reported North Dakota case deals with this subject, neighboring states have case law on the subject. See Hamilton v. Independent School Dist. No. 114, 355 N.W.2d 182 (Minn. App. 1984), and Raleigh v. Independent School Dist. No. 625, 275 N.W.2d 572 (Minn. 1978).

It is therefore conceivable that a school district could incur liability for student conduct where risks were present and

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known to school administration. Such liability would depend on the specific facts of a particular case. I note that the school principal's letter to me, dated May 15, 1995, and attached to your letter, discloses the existence of a school district incident report in addition to a police report. It, therefore, appears that the presence of the police report is not crucial to the school principal's knowledge of events and the resulting ability to act accordingly to adequately supervise students.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

rel/pg