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OFFICE OF THE ATTORNEY GENERAL  
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OPINION  
  
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No. 81-511  
  
DECEMBER 11, 1981

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THE HONORABLE JOHN G. SCHMITZ, MEMBER OF THE  
CALIFORNIA SENATE, has requested an opinion on the following question:

In view of Education Code section 49068 which requires a school district to send a pupil's records to another district upon the pupil's transfer to that district, may a school district withhold sending a pupil's records to another district pursuant to Education Code section 48909 because (a) the pupil has willfully cut, defaced, or otherwise injured the property of the school district, or because (b) the pupil owes the district money for class materials or has failed to return a book?

CONCLUSION

In view of Education Code section 49068 which requires a school district to transfer a pupil's records to another district upon the pupil's transfer to that district, a school district may not withhold sending a pupil's records to another district pursuant to Education

Code section 48909 because (a) the pupil has willfully cut, defaced or otherwise injured the property of the school district, or because (b) the pupil owes the district money for class materials or has failed to return a book.

## ANALYSIS

The present question concerns the authority of a school district to refrain from sending a transferring pupil's records to another school district because the pupil has failed to pay for class materials or return a book or because he has willfully damaged school property.

Governing the transfer of records when a pupil transfers to a different district is Education Code section 49068<sup>1</sup> which provides:

“Whenever a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within the state, the pupil's permanent record or a copy thereof shall be transferred by the former district or private school upon a request from the district or private school where the pupil intends to enroll. Any school district requesting such a transfer of a record shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record. The State Board of Education is hereby authorized to adopt rules and regulations concerning the transfer of records.”

Thus, the general rule is that upon the request of the district to which the pupil is transferring, the former district is required to transfer the pupil's records. (See also Cal. Admin. Code, tit. 5, § 438, the State Board of Education regulation which elaborates upon this statutory provision.) However, in a provision recently added to another section of the Education Code (§ 48909), the Legislature specified circumstances under which a school district could withhold designated pupil records. As provided in pertinent part in subdivision (b) of section 48909:

“Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a). When the minor and parent are unable to pay for the

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<sup>1</sup>Hereafter all section references are to the Education Code unless otherwise indicated.

damages, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of such voluntary work the grades, diploma, and transcripts of the pupil shall be released . . .”<sup>2</sup>

Thus, in section 48909(b) the Legislature has expressly authorized the withholding of records in those instances where a pupil has willfully injured the school’s property. We are thereby required to consider the relationship of two statutes each concerning school records but each with distinct purposes. One statute, requiring the transfer of records, seeks to enable the effective continuation of the pupil’s education after his transferring to a new school, whereas the other statute, authorizing the withholding of records, seeks to penalize a pupil for damaging his school’s property. The issue raised in relating these two statutes is whether the authorization of section 48909 to withhold designated records constitutes an exception to the general record transferring requirement of section 49068.

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<sup>2</sup>As set forth in full section 48909 provides:

“(a) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by or performing volunteer services for a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee shall be liable for all such damages so caused by the minor. The liability of the parent or guardian shall not exceed five thousand dollars (\$5000). The parent or guardian shall also be liable for the amount of any reward not exceeding five thousand dollars (\$5,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

“(b) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil’s parent or guardian has paid for the damages thereto, as provided in subdivision (a). When the minor and parent are unable to pay for the damages, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of such voluntary work the grades, diploma, and transcripts of the pupil shall be released.

“The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. Such procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.”

With regard to this issue we note initially that the two statutes do not refer to the same aggregate of records. The aggregates referred to may overlap, but they are not coextensive. Section 49068, requiring the transfer of records, refers to “the pupil’s permanent record,” whereas section 48909(b), authorizing the withholding of records, refers to “the grades, diploma, and transcripts of the pupil [in question].”

Relevant to assessing the distinctions between the items referred to in these two sections is the definition of “pupil record” contained in section 49061 (b) which to the extent pertinent provides:

“ ‘Pupil record’ means any item of information directly related to an identifiable pupil, other than directory information,<sup>[3]</sup> which is maintained by a school district or required to be maintained by an employee in the performance of his duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

“ ‘Pupil record’ shall not include informal notes related to a pupil compiled by a school officer or employee which remain in the sole possession of the maker and are not accessible or revealed to another person except a substitute. . . .” (See also Cal. Admin. Code, tit. 5, § 430(d).)

This broad definition is afforded more specificity with respect to the question of transferring records by the regulations issued by the State Board of Education. Here it is noted that the Legislature has authorized the State Board of Education to adopt regulations which “establish state policy as to what items of information shall be placed into pupil records . . .” (§ 49062) and to adopt regulations “concerning the transfer of records” (§ 49068). With respect to the transfer of records such regulations in relevant part provide:

“(a) When a pupil transfers to another school district or to a private school, a copy of the pupil’s Mandatory Permanent Pupil Record shall be transferred upon request from the other district or private school. The original or a copy must also be retained permanently by the sending district. If the transfer is to another California public school, the pupil’s entire Mandatory Interim Pupil Record shall be forwarded. If the transfer is out of state or to a

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<sup>3</sup>“Directory information” as defined in section 49061(c) “means one or more of the following items. student’s name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the student.”

private school, the Mandatory Interim Pupil Record may be forwarded. Permitted pupil records may be forwarded. All pupil records shall be updated prior to such transfer.

“.....

“(c) Pupil records shall not be withheld from the requesting district because of any charges or fees owed by the pupil or his parent. This provision applies to pupils in grades K-12 in both public and private schools.” (Cal. Admin. Code, tit. 5, § 438.)

Thus, when the pupil’s transfer is to another public school, both what the Board has denominated as the “Mandatory Permanent Pupil Record” and the “Mandatory Interim Pupil Record” must be transferred upon request of the other district. When the transfer is to a private or out-of-state school, only the “Mandatory Permanent Record” must be transferred upon such school’s request.

The Board’s regulations assign specific content to the terms “mandatory permanent” and “Mandatory Interim Pupil Record” with the following definitions:

“(1) ‘*Mandatory Permanent Pupil Records*’ are those records which the schools have been directed to compile by California statute authorization or authorized administrative directive. Each school district shall maintain indefinitely all mandatory permanent pupil records or an exact copy thereof for every pupil who was enrolled in a school program within said district. The mandatory permanent pupil record or a copy thereof shall be forwarded by the sending district upon request of the public or private school in which the student has enrolled or intends to enroll. Such records shall include the following:

“(A) Legal name of pupil.

“(B) Date of birth.

“(C) Method of verification of birth date.

“(D) Sex of pupil.

“(E) Place of birth.

“(F) Name and address of parent of minor pupil.

“1. Address of minor pupil if different than the above.

“2. An annual verification of the name and address of the parent and the residence of the pupil.

“(G) Entering and leaving date of each school year and for any summer session or other extra session.

“(H) Subjects taken during each year, half-year, summer session, or quarter.

“(I) If marks or credit are given, the mark or number of credits toward graduation allows for work taken.

“(J) Verification of or exemption from required Immunizations.

“(K) Date of high school, graduation or equivalent.

“(2) ‘*Mandatory Interim Pupil Records*’ are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation. Such records include:

“(A) A log or record identifying those persons (except authorized school personnel) or organizations requesting or receiving information from the record. The log or record shall be accessible only to the legal parent or guardian or the eligible pupil, or a dependent adult pupil, or an adult pupil, or the custodian of records.

“(B) Health information, including Child Health Developmental Disabilities Prevention Program verification or waiver.

“(C) Participation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge.

“(D) Language training records.

“(E) Progress slips and/or notices as required by Education Code Sections 49066 and 49067.

“(F) Parental restrictions regarding access to directory information or related stipulations.

“(G) Parent or adult pupil rejoinders to challenged records and to disciplinary action.

“(H) Parental authorizations or prohibitions of pupil participation in specific programs.

“(I) Results of standardized tests administered within the preceding three years. (Emphasis added; Cal. Admin. Code, tit. 5, § 432(b); see also *id.*, § 430(d).)

Thus the directive to transfer a pupil’s records to his new district is operative with respect to a broad array of informational items.

As to the authorization to *withhold* records the statute, as already noted, designates “grades, diploma, and transcripts” as the items that may be withheld. In its broad sense, the word “transcripts” may mean a copy of all of a student’s records (“an official copy of a student’s record at an educational institution;” Webster’s Third New International Dictionary (1961), p. 2426). However, the term is ordinarily understood in the academic context to refer to that portion of a student’s record relating to the subjects he has taken and the resulting grades and credits he has received (“an official report . . . on the record of an individual student listing subjects studied, credits and grades received, etc.,” The Random House Dictionary (Unab. 1966), p. 1504). Since the Legislature in authorizing the withholding of records specified “grades and diploma” as well as “transcripts,” it is apparent that the Legislature meant something less than all of the records in its use of the term “transcripts” because it would have been unnecessary to specify the other items if the broad meaning of “transcripts” was intended. As the court in *Scally v. Pacific Gas & Electric Co.* (1972) 23 Cal. App. 2d 806, 819 observed: “if the Legislature had intended the general words to be used in their unrestricted sense, it would not have mentioned the particular things or classes of things which would in that event become mere surplusage.” It is thus our view that the phrase “grades, diploma, and transcripts” as used in section 48909(b) refers to the items ordinarily associated with a school transcript; i.e., an enumeration of the courses taken and the grades and credits received. It can thus be seen that the authority to withhold records is substantially less comprehensive than the requirement to transfer records, which in addition to the usual transcript items is also

applicable to, among other things, such items as health records, records of eligibility for special education programs, and standardized test results. (Cal. Admin. Code, tit. 5, § 432(b).) From this difference in the scope of the records affected it can be inferred that the Legislature did not have the circumstance of interdistrict pupil transfers in mind when in section 48909(b) it authorized a school to withhold only the “grades, diploma, and transcripts” of a pupil who damaged school property. This is particularly evident because of the inclusion of “diploma” as among the specified documents a district could withhold. A diploma is the type of document that is traditionally issued to a graduating pupil and is not the type of document that is ordinarily transferred between one school and another. Thus these specified documents are those more readily associated with the somewhat particularized informational requirements of a pupil who is submitting job and college applications, rather than those encompassing the full range of information required for continuing the educational processes when a pupil transfers from one public school, or its private counterpart, to another.<sup>4</sup>

Additionally, a significant indication that the authority to withhold the specified records does not extend to the pupil transfer situation is found in the fact that in the statute requiring the transfer of records the Legislature, as indicated above, specifically conferred the authority “to adopt rules and regulations concerning the transfer of records” upon the State Board of Education. (§ 49068.) On the other hand, the Legislature directs each local school district or private school to “establish rules and regulations governing

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<sup>4</sup>Here we note that the record transferring requirement of section 49068 is not applicable to the transferring of records to colleges because that section is operative only when a “*pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district . . .*” (Emphasis added). The term “school district” as used in section 49068 is defined to mean: “any school district maintaining any grades of kindergarten through 12, any public school providing instruction in any grades of kindergarten through 12, the office of the county superintendent of schools, or any special school operated by the Department of Education.” (§ 49061(d) See § 72010 declaring that community colleges are established and maintained in “community college districts.”) The term “pupil” is defined in the regulations of the State Board of Education as “a person enrolled in any grade K-12, in an ungraded class, or individual instruction.” (Cal. Admin. Code, tit. 5, § 2(g).) This definition is consistent with the usage of the term throughout the Education Code (Compare part 27 (§ 48000 *et seq.*) with part 47 (§ 76000 *et seq.*) of the Education Code where use of the term “pupil” is confined to the K-12 context and the term “student” is used in those statutes applicable to colleges.)

Thus in its application to transfers to and from “school districts” by “pupils” (and to and from private schools by “pupils”) the statute is explicitly confined to precollege transfers and does not include a requirement that pupil records be transferred when one *graduates* from high school and enters college. The fact that section 49068 is operative in the case of “transfers” is itself confirmation of this limitation in that the term “transfer” is not ordinarily applied to describe the situation of entering college after high school *graduation* (See Webster’s Third New International Dictionary (Unab. 1961) p. 2427 defining “transfer,” in the sense pertinent here, to mean “to *withdraw* from one educational institution to enroll at another . . .” (Emphasis added).)



procedures for the implementation of” the statute authorizing the withholding of records. (§ 48909(b).)

If the authority to withhold records were to be deemed operative in the pupil transfer situation, the regulations of the various local boards and private schools would likewise be operative in that situation which, as noted, is already governed by a comprehensive and detailed system of regulations promulgated by the state board. (See Cal. Admin. Code, tit. 5, §§ 430 *et seq.*) With regulations covering potentially the same subject matter emanating from so many disparate sources, conflict, with its resultant confusion and administrative disruption, would appear to be virtually unavoidable. The Legislature cannot be deemed to have intended such untoward consequences. The courts have directed that in construing a statute “consideration should be given to the consequences that will flow from a particular interpretation. If two constructions are possible, that which leads to the more reasonable result should be adopted.” (*People ex rel. Riles v. Windsor University* (1977) 71 Cal. App. 3d 326, 332; accord, *Anderson Union High Sch. Dist. v. Schreder* (1976) 56 Cal. App. 3d 453, 460.) It is thus reasonable, because of the potential consequences of conflicting regulations, to construe the record withholding statute as not being applicable in the case of transfers.

In considering a further consequence of construing the record-withholding statute to encompass the pupil transfer situation, we note that if, because a pupil has damaged school property, his grades and transcript are withheld from the district to which the pupil has transferred, the continuation of his schooling in the new district might effectively be suspended until such records are released. However, the Legislature has in other statutes expressly provided for the suspension of a pupil who has damaged school property. (§ 48900(a).) But such power to suspend is expressly limited to a maximum of 20 days per school year with an additional 10 days permitted in limited circumstances. (§ 48903(g).)<sup>5</sup> Further, a suspended pupil must be permitted to make up and receive credit for assignments and tests missed during the suspension. (§ 48903.5.)

From this it would appear that the Legislature intended that suspension of the educational process as a sanction for a pupil’s misconduct be minimized. (See also section 48900(h) which in relevant part states: “It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from assigned school activities.”) On the other hand, if a suspension in effect were to result from the withholding of a pupil’s grades and transcript under section 48909(b), there would be no statutory limits on the length of such suspension other than the

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<sup>5</sup>See also section 48905 limiting *expulsions* to the end of the semester following the misconduct, unless the school board has adopted a procedure for yearly appeals of the expulsion.

indeterminate limit dependent upon the making of restitution or the completing of work in lieu of payment. Further, there is no requirement that a pupil be permitted to make up and receive credit for missed school work when such missed work is a result of the withholding of records from his school as there would be in the case of an actual suspension. (§ 48903.5.) Since “[i]t is presumed that the Legislature did not intend to act inconsistently on the same subject” (*Jacobs v. State Bd. of Optometry* (1978) 81 Cal. App. 3d 1022, 1031; accord, *In re Marriage of Cary* (1973) 34 Cal. App. 3d 345, 352), it is reasonable to assume that the Legislature did not intend the withholding of records to effect a suspension of the pupil, but intended such withholding to have other effects such as those relating to the filing of job and college applications.

It is thus our opinion that section 48909(b) authorizing the withholding of records is not operative in the context of interdistrict transfers. We therefore conclude that when a pupil transfers to another district, the pupil’s records must be transferred upon the request of the other district even though the pupil may have damaged school property or failed to pay fees or return a book to the school.<sup>6</sup>

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<sup>6</sup>With respect to the failure to pay fees, a State Board of Education rule expressly provides that “[p]upil records shall not be withheld from the requesting district because of any charges or fees owed by the pupil or his parent . . .” (Cal. Admin. Code, tit. 5, § 438(c).)