CONGRESSIONAL RECORD — SENATE

December 13, 1974

Mr. ROBERT C. BYRD, Mr. President, what is the amendment? Has anyone asked that further reading be dispensed with?

Mr. BUCKLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and without objection, the amendment will be printed in the Record.

The amendment is as follows:

Sec. 2. (a) (1) (A) The first sentence of section 438(b) of such Act is amended by striking out "State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution" and inserting in lieu thereof "educational agency or institution".

(B) Such first sentence is amended by striking out "attending any school of such agency, or attending any school of higher education, community college, school, preschool, or other educational institution" and inserting in lieu thereof who are or may be attending any school, agency or any such institution as the case may be.

(c) The third sentence of such section is amended by striking out "recipient" and inserting in lieu thereof "educational agency or institution".

(D) Paragraph (a) of section 438(b) of such Act is amended by striking out "State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution" and inserting in lieu thereof "educational agency or institution".

(E) Paragraph (2) of such section is amended by striking out "any school of such agency, or attending any school of higher education, any community college, any school, agency offering a preschool program, or any other educational institution" and inserting in lieu thereof "educational agency or institution".

(F) Section 438(a) of such Act is amended by inserting at the end thereof the following new paragraph:

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under such Act and any applicable amendments.

(A) The first sentence of section 438(b) of such Act is amended by striking out "any school of such agency, or attending any school of higher education, any community college, any school, agency offering a preschool program, or any other educational institution" and inserting in lieu thereof "educational agency or institution".

December 13, 1974

Mr. BUCKLEY. Mr. President, I offer, on behalf of myself and the distinguished Senator from Rhode Island (Mr. Pell), an amendment which has just been offered by Mr. Pell.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York (Mr. Buckley) proposes an amendment to the amendment of the Senator from Rhode Island.
December 13, 1974

CONGRESSIONAL RECORD — SENATE

39861

Case 1:12-cv-00327-ABJ Document 10-14 Filed 06/29/12 Page 2 of 7

HeinOnline -- 120 Cong. Rec. 39861 1974

AR 0853
1974, the educational community has pointed to certain ambiguities that have been contained in the language and provisions of the Act because there was both of the normal legislative history, it means that HEW does not have an adequate record on the basis of which to develop the necessary regulations.

After consultation with the Senator from Rhode Island, we concluded that the most appropriate way to handle the situation would be to offer at this time the last substantial questions that have just recently been brought to the desk on our behalf, which incorporates the necessary clarifications.

I also send to the desk at this time a statement that Senator Pell and I have agreed to, which provides a narrative and explanation of the meaning and intent of the various provisions of the amendment. I ask unanimous consent that the statement be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

**JOINT STATEMENT IN EXPLANATION OF THE BUCKLEY AMENDMENT**

The Family Educational Rights and Privacy Act of 1974, section 933 of the Education Amendments of 1974, was signed into law by President Ford on July 9, 1974. Some of the provisions became effective ninety days after enactment, on November 19.

The Act is two-fold—to assure parents of students, and students themselves if they are over the age of 18 or attending an institution or post-secondary education, the right of access to their records, and to protect such individual's rights to privacy by limiting the transferability of their records without their consent. The Department of Health, Education, and Welfare is charged with enforcement of the provisions of the Act, and failure to comply with its provisions can lead to withdrawal of Office of Education assistance to the educational agency or institution.

Since the passage of the Act, commonly referred to as the Buckley Amendment, after its principal sponsor, a number of ambiguities and questions have come to light. Since the language was offered as an amendment on the Senate floor, rather than having been the result of a bill being considered in the traditional legislative history materials such as hearings and Committee reports have not been published that guide to educational institutions, to students, and to the Department of Health, Education, and Welfare in carrying out their various responsibilities under the Act. The amendments being proposed are designed to remedy certain omissions in the provisions of existing law and to clarify other portions of the Act which have been the subject of extensive questioning and concern. It is the hope of the sponsors of these amendments that they will provide a suitable response to the issues surrounding existing law which have been raised by the educational community and institutions.

Existing law lists specifically in several points in the Act, the institutions and agencies to which the provisions apply. However, these lists are not always identical, creating questions of the applicability of the Act to certain institutions under certain circumstances. The尼克松 administration's interpretation of the Act's applicability, defines the term "educational agency or institution" as any public or private school, or any educational unit, or any educational unit, a recipient of federal funds under any applicable program. This definition serves to clarify a number of issues. First, it makes uniform the Act's application to all its subcomponents, so that no question remains of a school's inclusion under one part of the Buckley Amendment but not under another. Second, by defining the term generically rather than specifically, the amendment eliminates the possibility that provisions not meeting the specific definition might fall outside the Act's coverage. Finally, by explicitly limiting the definition of institutions participating in applicable programs, the amendment makes it clear that the Family Educational Rights and Privacy Act applies only to Office of Education programs and those programs delegated to the Commissioner of Education for administration. The entire reality of the regulation is limited to Part C of the General Education Provisions Act, which by its own terms applies only to the Office of Education. However, there has been some question as to whether the Amendment's provisions should be applied to other non-HEW education research programs such as Headstart or the educational research programs of the National Institute of Education. As rewritten, the limited nature of the Act's coverage should be clear.

Under the Family Educational Rights and Privacy Act, a parent is given the right to challenge the contents of his child's records to insure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights. This provision, section 4(e) of the General Education Provisions Act, has raised a number of questions which these amendments seek to answer. For example, 1) what are the records covered? 2) what records are covered? 3) what kind of proceeding should be undertaken?

First, the Act contemplates that the parent need not have a child still in attendance at the educational agency or institution at the time a hearing is sought in order to have the right to make a challenge on the accuracy or appropriateness of material in his child's file. The Buckley Amendment does give parties a right to challenge the content of records once their children have left the school possessing the records in order to have the records available to private records of which the children themselves might become available to parties outside the school do not contain inaccurate or inappropriate material.

In addition, the material subject to challenge is defined generally as "education records." The list of illustrative examples contained in existing law. "Education records" are described as those records that are maintained or originated by a school which contain information directly related to a student which are maintained by a school or by one of its agents. This definition is key element in an institutional record which should be able to know, review, and challenge all information—within certain limitations—on which the institution may make important decisions affecting his future, or which may be made available to parties outside the institution. This is especially true when the individual is a minor parent or a person in control of a student in order to protect the interest of their child.

The amendment makes certain reasonable exceptions to the access by parents and students to student records maintained in personal or private files and other materials, such as a teacher's daily record book, created by individual school personnel (such as teachers, doctors, etc.) as memory aids would not be available to parents or students, provided they are not included in any other record of a student, other than in the case of a substitute who performs another's duties for a temporary period.

The law enforcement records of a law enforcement unit associated with a school would be excluded if its personnel are not allowed access to a student's education records. Although therefore used solely for law enforcement purposes and are only available to other law enforcement officials of the same jurisdiction.

The employment records of a person not attending a given school would not be available to him, even though he has been a student elsewhere, if the records are used for other than employment purposes.

College students would not be able to challenge the contents of their nonacademic private records which are used solely in connection with treatment purposes and only available to others other than professional who have a doctor or other professional other than professional relationship with the individual. The amendment also notes that the law does not alter the confidentiality of communications other than professional relationship.

The law is not specific concerning the format, procedure, or mechanism for the conduct of a hearing at the local level. It is the intent of the sponsors of these amendments that a rule of reason would be followed by those participants who conduct the hearing to be conducted at the local level, a detailed specification of procedures cannot be drawn that could apply to each of the thousands of school districts and colleges across the nation. Each has a slightly different organizational structure and patterns of procedures. The hearing mechanism must be adapted in each instance to conform to these individual differences. In some cases, a school district will have a hearing at the school district level; in other instances, disputes about the content of records might be resolved at the hearing level. It is not the intent of the Amendment to burden schools with onerous hearing procedures.

The Amendment is not intended to require educational agencies and institutions to con form to fair information record-keeping practices. It is not intended to create or duplicate already established standards and procedures for the challenge of substantive matters made by the institution. It is intended, however, to provide a new process which will be more transparent than the present process, to the students, or their parents about whom decisions are being made, and to give them the opportunity to challenge and to correct—or at least enter an explanatory statement—inaccurate, misleading, or inappropriate information about them which may be in their files and which may contribute to an important decision made about them by the institution.

The law intends that parents have a full and fair opportunity to present evidence and information that their child's records contain inaccurate, misleading or otherwise inappropriate information. The hearing should be fair and be conducted within a reasonable period after the parent's request. There has been much concern that the right to a hearing will permit a student to contest the grade given the student's performance in a course. That is not intended. It is intended only that the student be permitted to challenge the accuracy of institutional records which record the grade which was actually given. Thus, a student who contests a grade of an improperly recorded grade, but could not through the hearing required pursuant to this section, who would have assigned a higher grade because the parents or student believe that the student was entitled to the higher grade.

On the other hand, a student who has been labeled mentally or otherwise retarded and put aside in a special class or school, parents should be able to review it. In the record which led to this institutional decision, and perhaps seek professional assistance in order to avoid inaccurate information or erroneous evaluations about their child.

Finally, it is intended that the parent would be shown the actual documents contained in the child's education records. However, under circumstances this might not be possible—where, for instance,
December 13, 1974

CONGRESSIONAL RECORD—SENATE

It is impossible to separate information about one student from that about others. If a student's name is on one in a long list of names, it would violate the others' rights to privacy if the college had to have the entire list shown to that student's parents. In such a situation, the record would not be returned to the college. The college would violate the privacy of other students if it were to keep the entire list. The institution is not to make the information concerning the student known to the parents, unless the students actually want to show the them the document.

Existing law prohibits the furnishing of personally identifiable information concerning students to other than those persons specifically authorized by the student, to whom the information should be given, or that of the student when he becomes 18 or enters postsecondary education. A literal interpretation of this language has led schools and the country to advise their clients no longer routinely to print football players' weights in athletic programs and to seek written consent of the coast of the individual to play that their names may be printed in the program. This narrow reading of the law is not what its authors intended, and it is contrary to the provisions of the law that have been made for the protection of the student.

The amendments provide that a school may only provide what is termed "directory information"—such personal facts as name, address, and telephone number—without the student's consent. The student's right to privacy is not in question, but it is the student's right to direct the release of non-directory information that is at issue. The amendments would amend such regulations to provide that the institution shall have the right to release information to the student's parents or others designated by the student.

The amendments would also amend that definition of "directory information" to provide that a student's right of access to non-directory information which is not individually identifiable to the student's parents or others designated by the student.

Finally, under certain emergency situations, it may become necessary for an educational agency or institution to release personal information to the health or safety of the student or other students. In the case of the outbreak of an epidemic, it is unrealistic to expect every student to consent to the release of information about his or her health status. In the event of a fire or other emergency, it is unrealistic to expect that every student will consent to the release of information about the student's location.

Organizations such as the Educational Testing Service, the Law School Admissions Council, the College Entrance Examination Board, and the American College Testing Application Service, and others, develop and validate a number of tests which are used by educational agencies and institutions. The amendments authorize the release of such data to such organizations without the individual student's consent. As long as the information is not personally identifiable to the individuals and organizations receiving such data, the amendments would authorize such access to enable the accreditor to carry out its functions.

One concern that has been expressed about the amendments is the transfer of all parental rights to information to the student after the latter's attainment of the age of 18 or entrance into postsecondary education. Colleges have been reluctant to send bills or grades of the student to the students' parents, for fear of a legal action. The amendments provided for the assignment of the school's right of access to the parents of a dependent student, as defined for tax purposes, to receive information on the student's academic performance, to information on the student's living arrangement, or to information about the student's health status.

The remainder of the amendment is purely technical in nature, correcting erroneous cross-references found in existing law which were created as a result of changes made in the law. The amendments, which are technical in nature, are intended to clarify and make more precise the provisions of the law. It is expected that the amendment will have little, if any, impact on the day-to-day operations of schools and colleges.
Mr. MONDALE. Mr. President, I am somewhat concerned as are Senator Williams and Senator Javits about the provision of this amendment that would permit state boards to barTerritory of Washington or any other territory or service normally provided to students at the institution, that a student sign such a waiver?

Mr. PELL. There is nothing in the proposed language which would permit an institution to require such a waiver as a precondition of enrollment, or any other service normally provided to students at the institution.

Mr. MONDALE. Would there be any conditions under which an institution could compel any of its students to sign such a waiver?

Mr. PELL. Under the proposed language, any combination which would permit to request such a waiver of applicants or students but would not be permitted to require that the student waive his rights to either the confidentiality of his records, or the requirement that a student sign any recordation at any time in the future? For example, under the proposed language, confidential statements or recommendations are split into three classes: Recommendations for applications of admission, for employment, and for honors or awards. Would, then, a postsecondary institution have to request the waiver for each of those classes of recommendations at the appropriate time?

Mr. PELL. A postsecondary institution could not request a general waiver which would apply for all time, but would have to ask at the appropriate time for each class of confidential statement or recommendation.

Mr. BUCKLEY. Mr. President, in the course of the past weeks, the Senator from Rhode Island and his staff and I have been in frequent contact about the questions and problems which have arisen regarding the act. We have discussed the problems with representatives of educational agencies and institutions, student groups, and public interest organizations. We have received a great deal of valuable information and suggestions, and I believe we have arrived at the appropriate manner of working together, to incorporate them all in language that I believe will meet every legitimate question that has been raised about the proposed legislation.

Mr. BUCKLEY. At this time, I should like to take occasion to express my deep personal appreciation of the tremendous spirit of cooperation and understanding that has been extended by me by the distinguished chairman of the subcommittee and to express my appreciation for his enormous sense of fairness.
term “education records” means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which:

(A) contain information directly related to a student; and

(B) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

The term “education records” does not include:

(I) records of instructional, supervisory, and administrative personnel and education or local educational agencies, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; or

(II) records of a law enforcement unit which do not have access to education records under subsection (B), (I), the records and documents of such law enforcement unit which are not made available to persons other than law enforcement officials of the same jurisdiction; or

(C) records of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution;

(A) records of educational personnel and maintained in the normal course of business which relate exclusively to such person in that capacity and which are not made available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(C) Nothing in this section shall be construed to preclude disclosure of, or in any way to affect the confidentiality of, communications otherwise protected by law as confidential.

(II) For the purposes of this section the term “directory information” relating to a student includes the following: the student's name, address, telephone listing, date of birth, and place of birth.

(III) Disclosures of personally identifiable information are permitted if the disclosure is made to the public or to another educational agency or institution with a legitimate educational purpose.

(A) Such disclosures are permitted if the disclosure is made to the public or to another educational agency or institution with a legitimate educational purpose.

(B) Such information is furnished in compliance with judicial or other orders, or pursuant to a lawfully issued subpoena, and upon the condition that parents and the students are notified of all such orders or subpoenas in advance of the disclosure of such information to the educational agency or institution.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Board of Supervisors of Education of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federal supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, however, that such personally identifiable data is specifically authorized by Federal law, any data collected, used, or disseminated by individuals acting on behalf of parents or students shall not include information (including social security numbers) which could be used to identify the educational records of such students or their parents (after the data so obtained has been collected) by such officials or agencies.

(C) With respect to subsections (c) (1) and (c) (2) and (c) (3), all persons, agencies, or organizations desiring access to the records described under this section shall sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating respect to the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to persons and to the school official responsible for record maintenance as a means of auditing the operation of the system.

(D) In connection with a student's application for, or receipt of, financial aid; (E) State educational authorities, under the conditions set forth in paragraph (3) of this subsection.

(F) Organizations of educational agencies or institutions for the purpose of developing, validating, and administering predictive tests, if the test results are not used as a basis for eligibility determination by such agency or institution, and if the student is informed in advance of the test.

(G) Agencies, or organizations with which a student is affiliated, in order to carry out their accreditation functions.

(H) Parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954.

(I) Subject to regulations of the Secretary, in connection with an emergency, appropriation, or public health or safety of the student or person other than the student.

(J) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school or school district, or any other educational institution, or any other educational agency or institution which has a policy of not providing education to any person who has not signed the written consent of the parents of the student.

(C) The Secretary shall adopt appropriate regulations to protect the privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or by an educational agency or institution. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. Such surveys or data-gathering activities shall be conducted by the Secretary, or by an administrative head of an educational agency under an applicable program, unless such activities are authorized by law.

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, or is enrolled in a law enforcement program, or is employed by an educational agency or institution, such student's consent is required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(E) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of not providing education to any person who has not signed the written consent of the parents of the student.
CONGRESSIONAL RECORD—SENATE  

December 13, 1974

section, according to the provisions of this Act, except that action to terminate assistance be taken only if the Committee finds there has been a failure to comply with the provisions of the Act, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of the provisions of this Act. The procedures contained in sections 434 and 437 of this Act except for the conduct of hearings of the function of the Secretary under this section shall be carried out in any of the regional offices of such Department.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senate from New York and the Senator from Rhode Island.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Colorado to concur in the House amendment with an amendment.

The motion was agreed to.

Mr. FELL. Mr. President, I move that the Senate insist upon its amendments and ask for a conference with the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the PRESIDING OFFICER [Mr. Williams] appointed Mr. Randolph, Mr. Williams, Mr. Kennedy, Mr. Mondale, Mr. Eagleton, Mr. Cranston, Mr. Hatfield, Mr. Dominick, Mr. Javits, Mr. Schweiker, Mr. Beall, and Mr. Stafford to confer on the part of the Senate.

SUPPLEMENTAL APPROPRIATIONS, 1975—CONFERENCE REPORT

The Senate continued with the consideration of the report of the conference committee on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 16909) making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I move to send the desk a cloture motion.

The PRESIDING OFFICER [Mr. Williams]. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows: CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the adoption of the conference report on H.R. 16909, the Export-Import Bank Act Amendment.


ORDER TO HOLD RESOLUTIONS ON DEFERRALS AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that two resolutions at the desk on deferrals, one by Mr. Biskupski and one by Mr. Humphrey, be held at the desk for later disposition. I further request that the later disposition not be had without my having first been contacted.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSIONS

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Michigan (Mr. Hart) I ask unanimous consent that the Subcommittee on Administrative Practices of the Committee on the Judiciary be authorized to conduct hearings on an amendment on Wednesday and Thursday, December 18 and 19.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the following measures on the Calendar: Calendar Order No. 1248, Calendar Order No. 1264, Calendar Order No. 1266, Calendar Order No. 1267, Calendar Order No. 1270, and Calendar Order No. 1272.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHILDREN'S GIFT BELL MEMORIAL

The Senate proceeded to consider the joint resolution (S.J. Res. 215) to authorize the erection of a Children's Gift Bell and Memorial Tower in the District of Columbia, and for other purposes, which had been reported from the Committee on Public Works and the Committee on Appropriations, and was to be struck out after the resolving clause and insert in lieu thereof: That the American Freedom Train Foundation is authorized to erect a memorial bell tower of appropriate design on public grounds in the District of Columbia or its environs, in honor of the bicentennial celebration of the signing of the Declaration of Independence.

Sec. 2. (a) The Secretary of the Interior is authorized and directs to select, with the approval of the National Commission of Fine Arts and the National Capital Planning Commission, a suitable site on public grounds in the District of Columbia or its environs, upon which may be erected the memorial authorized in the first section of this Act. Provided. That it is further ordered that the site selected is on public grounds belonging to or under the jurisdiction of the government of the District of Columbia, and that the Mayor and City Council of the District of Columbia shall be obtained.

(b) The design and plans for such memorial bell tower shall be subject to the approval of the Secretary of the Interior, the National Commission of Fine Arts, and the National Capital Planning Commission.

Sec. 3. The memorial authorized to be erected by the first section of this Act shall be erected without expense to the United States and shall be maintained by the Secretary of the Interior.

Sec. 4. The authority granted by the first section of this Act shall terminate three