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ABSTRACT

A federal district judge, two lawyers employed by a school district, nine research, evaluation, and development directors, and five pupil personnel directors employed by school districts in seven states were interviewed to study the effects that recently enacted federal privacy acts will have on school districts. With few very clear exceptions it was felt that the federal legislation in this area has been beneficial. If a researcher wishes to conduct research in a school district and must have student records as a part of that research, the district must deny that request unless it feels that the results would be beneficial to students and/or the district. Now, researchers must explain, clarify, and obtain permission from the parents of children with a written release before they can conduct studies, once those studies are approved by the school district. The new laws are not seen as posing any problems for public school based research, evaluation, and development staff; they do prohibit research that is merely interesting and of no benefit to anyone, save the researcher. (RC)

RELEASE OF RESEARCH INFORMATION - A TALE OF TWO CITIES

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By way of introduction and for purposes of clarification, I would like to interject that I have had the opportunity, within the last seven years, of heading a department of research, evaluation, planning and development in two different school districts. One, a large school district of over 60,000 students in an urban setting, the population of this school district is approximately 50% Black and 50% poor, not necessarily the same people in both of those categories. The second school district has a population of 20,000 students and is predominately white and middle-class.

In an effort to expand from my own experience base to provide more than a personal opinion for this paper, I recently interviewed a Federal District judge, and two lawyers employed by school districts, to study the effects that recently enacted federal privacy acts will have on school districts. I have also recently interviewed 9 research, evaluation and development directors and 5 pupil personnel directors who work in school districts that have 8,000, 12,000, 32,000, 65,000, 90,000 and 160,000 students in seven different states with varied educational and demographic characteristics. In general the results from the interviews agree very much with my experiences and the experiences of approximately 40 additional colleagues with whom I discussed this issue earlier, who are directors of research in large city school districts and who have been concerend with the new acts guaranteeing privacy rights for parents and students. With very few clear exceptions we feel that the federal legislation in this area has been beneficial. The lawyers and the judge feel that there need be few changes in the way school districts deal with student records and information. Their opinions suggest the school districts must only be extremely rigorous in protecting student records and information from outside agencies except those specifically exempted in the laws. But the school district can provide to those same agencies information contained in student records if the school district requests cooperation and services from those agencies to assist in obtaining information that the school district deems beneficial to students and/or the district itself. In other words if a researcher wishes to conduct research in a school district and must have student records as a part of that research, the district must deny that request unless it feels that the results will be beneficial to students and/or the district.

Now, after most of the facts are in and more of them coming in, some short period of time after the enactment of federal privacy regulations, designed to protect the privacy rights of parents and students with all amendments intact, almost everyone in school districts seems to agree that they are not only satisfied with the way that all of this has shaken down but are very happy to have had it happen and have few, if any, problems with the act or the ramifications therein.

From a school district point of view the new laws and the amendments have brought about a revision, a clarity and a rigorous implementation of policy directed toward the protection of their constituent's rights of privacy. This of course has not always been the case and many of us were aware that it was not, but for reasons that are hardly defensible, very few things were done about it. There are numerous horror stories one can conjure up from the past that point to the necessity of laws similar to the ones we now have. For example, some four years ago I was asked to review the record keeping systems of five high schools in an urban school district and advise the superintendent of that district as to whether or not those record keeping policies within those five high schools should be left alone, modified or greatly revised. Out of that review comes the following horror story: Each high school had in its own building a separate method of keeping records for student grades, attendance, disciplinary issues, test data, teacher prepared student behavior descriptors and what have you. In addition each high school had a different method of transmitting data that was contained in a large student file to a summary form called a "permanent record" that was to be kept within that high school with a copy transmitted to the central office upon graduation of that student. The major issue that I wish to address was the process by which the five high schools reduced data from a 10 to 20 page student file that contained that student's records from the day they entered kindergarten through high school graduation, to a single page "student permanent record". In order to be more specific and also better explain the issue, let me refer to one piece of data that existed on the student permanent record. That was a single line that stated, "Student I.Q.". Being a student of test and measurement principles, one of the questions that I asked each of the high school principals was, "Where did you get the data from the student file to put a number on that line called Student I.Q.?". In all five cases none of them knew. In all five cases we began by asking assistant principals, then counselors - none of them seemed to know. We finally ended up asking the head secretary in each of the high schools. These were the people who knew. One secretary explained the

problem very clearly. She stated, "Well, if you lock in the student file you will find, in almost all files where students have been in the school district for any length of time, there are four I.Q.'s posted, one when the child was in the second grade, a second in the sixth grade, a third in the ninth grade and often a fourth in eleventh grade. What we here in the office do is look through all four of those and put the highest one on the student permanet record card". Another high school officer manager/head secretary stated, "We just put on the last one that we can find", a third said, "I guess it's up to the secretary that posts those as to which one is put on, no one told us what to do", a fourth said the same thing, and a fifth said, "Gosh, we don't know, they just somehow get put on there and we don't have any procedure by which we place them". That set of conditions seems to transpire for many records in many schools. The decisions as to what goes on or in a student's records often are made, or have been made in the past, by the office secretary. Those conditions now do not exist except in very rare cases, and we can attribute that change to the new laws. In addition to the horror story that I have noted above there was one other horror story that came out of one of the high schools that I examined. This high school was close to a large urban university where there were quite a few graduate students doing various kinds of research in public schools in general and in this particular high school. There had evolved over time a process that allowed any graduate student doing research in this high school, for any reason, entry into the student record room to get data simply because there were so many students doing research and no one was available to monitor what it was they were pulling out. Consequently any student, professor, outsider or passerby off the street could walk into that high school, utter the magic word "research", go into the student record files and obtain any information that was contained either in the student file or on the student permanent record cards. A procedure that has been discontinued partly because of the evaluation of those high schools' record system but primarily because of the new federal laws insuring privacy. In that district and in most others, there are now clear policies implemented rigorously that protect students from non-defensible data being entered into their record files or placed upon their permanent record cards, and there are clear policies implemented rigorously to protect the information in those files from anyone other than that student, student's parents, school district personnel, who have a right to know, and significant others who are allowed to have access to that data by the federal laws. No

one else is allowed access to that information.

The new laws, as they exist and are currently interpreted, do not pose any problems for public school system based research, evaluation or development staff. A close examination of those laws points out that they contain a very clear set of statements allowing public school based researchers and others access to any and all records and allow the capabilities for research, investigation, evaluations and any other thing pertinent to the issue of decision making in regard to students and/or programs in that school district. Granted there has been a reduction in research in many public schools as a result of unclear interpretation of these laws. From my observations and the information provided to me by colleagues in similar positions in other school districts, the kinds of research that have been eliminated is however of little or no loss to us in school districts. The laws have reduced or eliminated research possibilities from those who would choose to use a captive audience and administrative edict to order that audience to participate in research. Now, researchers must explain, clarify, obtain permission from the parents of children with a written release before they can conduct studies, once those studies are granted approval by the school district. The new laws have eliminated some other forms of study that school districts are asked to participate in, that some have particpated in in the past but would no longer do so. I would like to cite three studies as an example of the ones that the law assists us in rejecting now. (1) A private research organization within the last year submitted a somewhat formal proposal to the school district in which I now work to conduct research using junior high school students who steal, as subjects. The research would have involved a series of interviews with those students and their parents and would have attempted to ascertain the psychological and family deficiencies that produced children who steal. (2) A second study was interested in doing research with high school students to ascertain the differential fatty tissue growth rate between female and male high school students. The researcher wanted to measure fatty tissue growth on various areas of these students' bodies and they gave us a listing of their preference areas. The first preference was the measurement of fatty tissue growth in and around the students' nipples. (3) A third study was a request from a graduate student to grant him an opportunity to observe a number of elementary children for an extensive period of time to ascertain what color of ball children find most easy to hit well with a racquet. No design, no theory; no clear cut procedure - he just thought it would be an interesting topic.

The privacy acts allow, possibly mandate, that research involving public school students must be governed by the school districts in which those children attend. The school district can contract with outside researchers to guarantee a quality governance, or generate their own research departments, something they have been doing at a rapidly increasing rate (from approximately 100 school based RDE departments in 1972-73 to over 350 in 1975-76). School districts seem to be installing RDE departments "in house" to generate research capabilities to provide answers to questions outside research agencies have not traditionally been interested in. Now they may have to become interested in some of these issues to be able to conduct research that only they are interested in. As far as I am concerned the issue is moot. All that is left to haggle over is the proportion. In sum the privacy acts do not deter school based RDE departments from conducting any research they deem necessary.

The new laws seem to be only of minor concern for school based pupil personnel service departments or school system records departments. Apparently in the past many school districts had worked out relatively loose agreements with other outside social agencies, such as the Welfare, Juvenile Offices, Juvenile Courts, the F.B.I., the local Police, the local Sheriff's Department, Drug Abuse Centers, etc., that at times were misused but rarely. Again, there are a number of horror stories one could dig up out of the past to suggest that there had been a misuse in cooperative efforts between other agencies and school districts in the release of information in student records but I think our fatty tissue development research study was enough and will not delve into other past misuses of student data. For now what I find to exist with many agencies where school districts have instituted clear policy, and a rigorous application of procedure pertinent to that policy, regarding the privacy of their constituents, is that they have worked out clearly defined procedures for working with these other social agencies. Many school districts, due to the new laws, have initiated and brought about a coordination of social service agencies and themselves even including local judges and federal district judges to clarify who gets what information, how that information is generated, and under what circumstances various forms of information is to be made available to outside agencies. Basically, the new laws have provided an opportunity for greater dialgoue between school districts and other social agencies that would not seem to have occurred any other way. There are still some problems for student personnel and student records departments to transfer and/or obtain student records across various educational

agencies. Most of the difficulties however, seem to stem from many varied interpretations of the new federal laws. This, we are confident, will work itself out relatively quickly as more interpretation of the new laws are let down from the courts, and in the future see it to be of little issue or consequence.

Without attempting to belabor the point, the new laws do not seem to be much of a problem for state or federal education, legal, or auditing agencies in that there is a clear provision in the law that those agencies must have access to any and all data that they request; if the requests are orderly and in compliance with the law itself. I see no issue here. Who then are the laws a problem for? Who then perceives the laws to be a problem? At the present time the laws seem only to be a major problem for the researcher, evaluator, developer, experimenter whose interests and locus of work are outside of those of a school district where that person wishes to perform research, to develop products, to do evaluations or to conduct experiments.

At the present time many school districts are establishing committees, generally called research review committees, to govern the work that non-school based researchers and others wish to do in a particular school district. As an appendix to this report, I submit the rules and regulations generated by three different research review committees from three different school systems (Merriman). They are very much the same and they basically govern the type of study that they will allow outside researchers to conduct and suggest other studies they wish would be conducted, and this seems to be the problem. In the past the educational researcher located in the university, college, lab, or center, was able to operate with a definition of professionalism that allowed that researcher total autonomy in deciding not only how their research would be conducted, (so long as they followed experimental methodology clearly), but also what kinds of research that person would choose to engage in and the locale in which they would choose to conduct their research. Now, partly because of the privacy act, partly because of the increased necessity to obtain data for decision making, local school systems are exercising more and more control over the outside researcher's ability to freely decide what research to conduct by deciding what kinds of research they will allow done in their school district. Local school districts are no longer willing to allow the researcher to do what he or she pleases, but seem to be more and more willing only to allow research that will provide that school district with information for decision making. A set of conditions that is beginning to open a schism between the university based researcher

an opportunity to collaborate with school based researchers on heretofore almost unknown terms, as equals. It may allow the non-school based researcher an opportunity to enter into productive dialogue into such things as the definition of the quality of, and the productive capabilities of his research, with not only school based researchers, but administrators, teachers and parents. It may bring about a condition where the non-school based researcher is as concerned with the effects of the research data, its dissemination and its uses in decision making, to the same degree he or she is concerned in the design of that research. A condition that those of us based in public schools would dearly like to see.

As a final note, I would like to discuss, only briefly, the issue of proportion. It is a simple issue worthy of only brief concern. Simply stated, in the near future those of us based in public schools, conducting research efforts would like to see, outside researchers spending 25% of their research efforts conducting research that school districts want done. To be able to spend the remaining 75% of their efforts doing what they wish to do. I believe that this is a condition and a proportion that will occur. I also believe it to be a professionally healthy condition - one that will allow public schools greater access to the best problem solvers in the business, university based researchers, assisting us in working on problems that we cannot solve alone.