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PUBLIC RECORDS AND INFORMATION:
School Student Records

Honorable Jim Edgar
Illinois Secretary of State
Springfield, Illinois 62756

Dear Mr. Edgar:

I have your letter wherein you inquire whether the disposal of student records by local school districts is subject to the provisions of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.101 et seq.). For the reasons hereinafter stated, it is my opinion that The Local Records Act is applicable to student records maintained pursuant to the Illinois School Student Records Act (Ill. Rev. Stat. 1981, ch. 122, par. 50-1 et seq.), and therefore, that a local school district must obtain the written approval of the appropriate

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local records commission before destroying or otherwise disposing of such records.

Section 4 of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.104) provides, in pertinent part:

"All public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.

* * *

Section 3 of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.103) provides in part:

"Except where the context indicates otherwise, the terms used in the Act are defined as follows:

'Agency' means any court, and all parts, boards, departments, bureaus and commissions of any county, municipal corporation or political subdivision.

* * *

'Officer' means any elected or appointed official of a court, county, municipal corporation or political subdivision.

'Public record' means any book, paper, map, photograph, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein. * * *

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Since a school district possesses the attributes of a "political subdivision" (see Scown v. Czarnecki (1914), 264 Ill. 305, 314; see also People v. Wood (1952), 411 Ill. 514, 522; Leviton v. Board of Education (1940), 374 Ill. 594, 599; Melin v. School District (1924), 312 Ill. 376; McLanahan v. Cochise College (Ct. App. Ariz. 1975), 540 P.2d 744, 747; Arkansas State Highway Commission v. Clayton (S.Ct. Ark. 1956), 292 S.W.2d 77, 79; Dugas v. Beauregard (S.Ct. Conn. 1967), 236 A.2d 87, 89; People v. Egleston (App. Ct. Mich. 1982), 319 N.W.2d 563, 564; Allison v. Corker (Ct. Err. & App. N.J. 1902), 52 A.362, 365), a school district is within the definition of "agency" contained of The Local Records Act. (See also Ill. Rev. Stat. 1981, ch. 116, par. 43-103a.)

Moreover, the statutory definition of "public record" includes "any paper * * * or other official documentary material * * * made * * * by any agency * * * in connection with the transaction of public business and preserved or appropriate for preservation by such agency * * * because of the informational data contained therein". Clearly, this definition is broad enough to include school student records which are made by a school district or its schools. Thus, school student records are "public records" as defined in section 3 of The Local Records Act.

Two local records commissions were created by section 6 of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par.

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43.106). Section 7 of The Local Records Act (Ill. Rev. Stat. 1981, ch. 116, par. 43.107) provides, in pertinent part:

"Except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.

* * *

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(Emphasis added.)

The Local Records Act, by its terms, governs the disposal of all local public records, except as otherwise provided by law. In cases in which a separate statute governs the disposal of specific local public records, the provisions of The Local Records Act do not apply. Therefore, whether The Local Records Act applies to the disposal of school student records depends upon whether a separate statute specifically governs their disposal.

The Illinois School Student Records Act was enacted to bring State law concerning student records into conformity with the Federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g). (See, generally, remarks of Representative Houlihan, May 23, 1975, House Debate on House Bill No. 1884, at 12.) The aforementioned Federal Act provides, with certain exceptions, that no Federal funds shall be made available under any applicable program to any educational agency or institution which allows the release of confidential

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educational records of students to any individual, agency, or organization. The exceptions permitted under Federal law are incorporated in the Illinois School Student Records Act.

Section 4 of the Illinois School Student Records Act (Ill. Rev. Stat. 1981, ch. 122, par. 50-4) provides in part:

"(a) Each school shall designate an official records custodian who is responsible for the maintenance, care and security of all school student records, whether or not such records are in his personal custody or control.

(b) The official records custodian shall take all reasonable measures to prevent unauthorized access to or dissemination of school student records.

* * *

(e) Each school shall maintain student permanent records and the information contained therein for not less than 60 years after the student has transferred, graduated or otherwise permanently withdrawn from the school.

(f) No school shall maintain any student temporary record or the information contained therein beyond its period of usefulness to the student and the school, and in no case longer than 5 years after the student has transferred, graduated or otherwise permanently withdrawn from the school. Notwithstanding the foregoing, a school may maintain indefinitely anonymous information from student temporary records for authorized research, statistical reporting or planning purposes, provided that no student or parent can be individually identified from the information maintained.

(g) The principal of each school or the person with like responsibilities or his or her designate shall periodically review each student temporary record for verification of entries and elimination or correction of all inaccurate,

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misleading, unnecessary or irrelevant information. The State Board [of Education] shall issue regulations to govern the periodic review of the student temporary records and length of time for maintenance of entries to such records.

(h) Before any school student record is destroyed or information deleted therefrom, the parent shall be given reasonable prior notice in accordance with regulations adopted by the State board and an opportunity to copy the record and information proposed to be destroyed or deleted.

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Section 2 of the Illinois School Student Records Act (Ill. Rev. Stat. 1981, ch. 122, par. 50-2) provides the following definitions of terms used in that Act:

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* * *

(d) 'School Student Record' means any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored. The following shall not be deemed school student records under this Act: writings or other recorded information maintained by an employee of a school or other person at the direction of a school for his or her exclusive use; provided that all such writings and other recorded information are destroyed not later than the student's graduation or permanent withdrawal from the school; and provided further that no such records or recorded information may be released or disclosed to any person except a person designated by the school as a substitute unless they are first incorporated in a school student record and made subject to all of the provisions of this Act.

(e) 'Student Permanent Record' means the minimum personal information necessary to a school in the education of the student and contained in a school student record. Such

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information may include the student's name, birth date, address, grades and grade level, parents' names and addresses, attendance records, and such other entries as the State Board may require or authorize.

(f) 'Student Temporary Record' means all information contained in a school student record but not contained in the student permanent record. Such information may include family background information, intelligence test scores, aptitude test scores, psychological and personality test results, teacher evaluations, and other information of clear relevance to the education of the student, all subject to regulations of the State Board.

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Section 3 of the Illinois School Student Records Act (Ill. Rev. Stat. 1981, ch. 122, par. 50-3) provides in part:

"(a) The State Board [of Education] shall issue regulations to govern the contents of school student records, to implement and assure compliance with the provisions of this Act and to prescribe appropriate procedures and forms for all administrative proceedings, notices and consents required or permitted under this Act.

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Section 6 of the Illinois School Student Records Act (Ill. Rev. Stat. 1981, ch. 122, par. 50-6) prohibits the release of student records or information contained therein to any person not specifically excepted by that section.

The Illinois School Student Records Act requires that student permanent records be maintained for a minimum period of sixty years, while prohibiting the maintenance of student

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temporary records for longer than five years. Pursuant to section 3 of the Illinois School Student Records Act, the State Board of Education is authorized to promulgate and issue regulations to implement and assure compliance with the provisions of the Act. Neither section 3 of the Illinois School Student Records Act, nor any other provision thereof, however, specifically authorizes the State Board of Education to promulgate and enforce regulations governing the disposal of student records maintained under that Act.

The purpose of the Local Records Act is to establish a program for the management of local public records to facilitate and expedite governmental operations, and to insure that no public records are destroyed except in accordance with law. (Lopez v. Fitzgerald (1979), 76 Ill. 2d 107, 114-16.) The purpose of the Illinois School Student Records Act is to regulate access to or dissemination of information contained in student records maintained by schools. The Illinois School Student Records Act does not specify procedures relating to the destruction of student records, except to provide that before a school student record is destroyed, the parent of the student be given the opportunity to copy its contents. (Ill. Rev. Stat. 1981, ch. 122, par. 50-4.) The Illinois School Student Records Act does not provide by law for the destruction of public records within the meaning of the Local Records Act.

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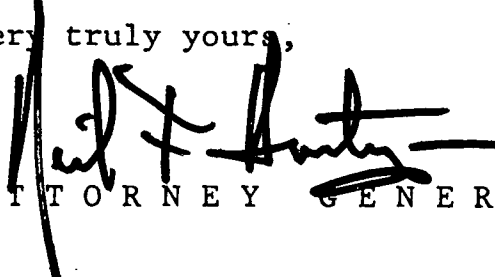
It is a well-established principle that statutes should be interpreted consistently with one another where possible, and further, statutes should be construed with other statutes touching the same subject as part of a coherent system of legislation. (Schwartz v. City of Chicago (1974), 21 Ill. App. 3d 84, 88; see also MacVeagh v. Royston (1897), 71 Ill. App. 617, 620, aff'd 172 Ill. 515 (1898)). The provisions of the Local Records Act pertaining to the destruction of local public records are not repugnant to the provisions of the Illinois School Student Records Act, and both Acts may be construed together so as to give effect to each. Because the Illinois School Student Records Act does not specify methods and procedures for the destruction of school student records, the provisions of the Local Records Act concerning the destruction of public records apply.

For the reasons hereinabove stated, it is my opinion that the provisions of the Local Records Act apply to the destruction of school student records, subject only to the specific requirements of the Illinois School Student Records Act concerning the maintenance of such records. Therefore, before destroying any temporary or permanent student record, or information contained therein, a school records custodian must seek and receive the written approval of the appropriate local records commission. Local records commissions must recognize

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and give effect to the statutory time periods governing the maintenance of student records under the Illinois School Student Records Act. Thus, a local records commission may not authorize the destruction of a student permanent record less than sixty years after the student has left the school, or require the maintenance of a student temporary record for more than five years, or its period of usefulness as determined by the school.

Very truly yours,



A T T O R N E Y G E N E R A L