

Charlie Mae Moore, Administrator
Teacher Certification
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Release of teachers'
transcripts to third
parties

Janice Gregg Levy
Assistant Attorney General
Human Services-Juneau

Introduction

You have asked whether college transcripts of certified teachers or certificate applicants are confidential, or whether they must be released at the request of a member of the public. After a review of Alaska's disclosure statutes and a search for a relevant exception, I believe the short answer to your question is yes--the transcripts must be released.

Analysis

Whether you must release the transcripts will be determined by answering two questions: (1) Are the transcripts public records, covered by Alaska's disclosure laws? (2) If they are public records, is there an exception that would prohibit public access to them?

1. Are the transcripts public records?

The right of the public to obtain access to public records is found in the statutes. AS 09.25.110(a) states:

Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 09.25.115 a certified copy of the public record.

Public records are defined as "books, papers, files, accounts, writings . . . that are developed or received by a public agency . . . and that are preserved for their informational value or as evidence of the organization or operation of the public agency[.]" AS 09.25.220(6). This language is very broad indeed, and would certainly include a transcript sent to your office and

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included in your files. Thus, the transcripts are subject to disclosure unless they are covered by an exception to the law.

2. Is there an applicable exception that would prohibit public access?

AS 09.25.120 sets out six exceptions to the general rule of disclosure, only two of which could be relevant to teacher transcripts: "(4) records required to be kept confidential by a federal law or regulation or by state law;" and "(5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance." 20 U.S.C. • 1232(g) is the federal law you brought to my attention. I have discussed it below under "Federal Law," and conclude that it does not provide an exception that justifies nondisclosure.

Federal Law

The transcripts you receive from universities are typically stamped or printed with information advising that disclosure of the transcript to third parties is prohibited by P.L. 93-380, or the Family Education Rights and Privacy Act of 1974 (FERPA), 20 U.S.C.S. • 1232(g). This federal law protects student records, and prohibits the colleges from releasing student transcripts to third parties without the consent of the student. In your hands, however, the transcripts are not "student" records but rather a part of a teacher certification file, and thus not protected by the statute. The law states that

[f]or purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

20 U.S.C. • 1232g(a)(6) (emphasis added). The teachers for whom you keep records are not in attendance at your agency. Therefore I do not believe they can seek protection under this law.

The question was examined in Klein Independent School Dist. v. Mattox, 830 F.2d 576 (5th Cir. 1987), where a teacher argued that disclosure of her college transcript would violate

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her privacy rights based on FERPA. The court found that the statute was enacted to prohibit a school from releasing records of its students, and concluded that it did not protect the records of an employee of a school district where the teacher was not a student.

Because she is an employee and not a student of the institution requested to disclose her transcript, she does not fall within that class of people for whose benefit FERPA was created. Ms. Holt is not a "student" and her college transcript is not an "education record" protected from disclosure pursuant to FERPA's provisions.

Klein at 579. The Washington Supreme Court reached a similar result, stating that FERPA "protects student records, not teacher records." Brouillet v. Cowles Publishing Co., 791 P.2d 526 (Wash. 1990).

Your agency, of course, is not an employer of the teacher, and you may wonder if that distinguishes you from the Klein and Brouillet results. Again, because teachers are not "in attendance" at your agency and because they submit the transcripts to you in their capacity as teachers, not students, they do not fall within the class of people FERPA was intended to protect. Therefore, the certification files you maintain are not required to be kept confidential under 20 U.S.C. • 1232(g), and the general rule of disclosure applies.

State Law

A provision of state law could also override the general rule of disclosure and prohibit inspection of public records, and there are some express statutory provisions to that effect for certain records. There is not such a provision, however, covering certification files.

Finally, the Alaska Constitution protects the right of privacy in article I, section 22. A teacher could argue that release of a transcript is violative of that right. The type of information that implicates the right of privacy is information "which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a reasonable person." Falcon v. Alaska Public Offices Comm'n, 570 P.2d 469, 479 (Alaska 1977). The right is not absolute, however, and the document may still have to be

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disclosed. The agency must apply a balancing test to determine whether the degree of intrusion outweighs the public's interest in disclosure. Id. at 476-78.

It is highly unlikely that a teacher has a right of privacy in the transcript sent to your office for purposes of teacher certification. Even assuming, however, that such a right does exist, it is almost certain that the public's interest in knowing the qualifications of public school teachers outweighs the teacher's interest in keeping the transcript private. This was the result reached in Klein Independent School Dist. v. Mattox, 830 F.2d 576 (5th Cir. 1987), where a similar balancing test was applied. The court found that disclosure of a transcript did not rise to the level of "unwarranted invasion of personal privacy" and that even if it contained some embarrassing information, "the public must have full and complete information concerning the teachers who serve the public in educating their children." Id. at 581.

Conclusion

The standard for disclosure of public records in Alaska is set out in the statutes, and construed by the courts as a strong policy favoring inspection of public records. Only where an exception can be found is the agency permitted to withhold the record. I cannot find an applicable exception, and thus I believe that AS 09.25.110 - 09.25.120 require you to disclose teacher transcripts upon request. If you have any further questions, please let me know.

JGL/bap