



# STATE OF INDIANA

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November 20, 2013

Mr. Bob Zaltsberg  
Via Email

*Re: Informal Inquiry 13-INF-59; School Vouchers and Scholarship Awards*

Dear Mr. Zaltsberg:

This is in response to your informal inquiry regarding School Voucher Awards or Choice Scholarships Awards. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

Your inquiry requests an Opinion as to whether information regarding the Indiana Choice Scholarship Voucher Awards are records that may be withheld from disclosure by the Department of Education ("Department").

On or about October 21, 2013, Reporter Mary Keck served upon the Department a request for the following records:

1. The name and address of each student enrolled in the Monroe County Community School Corporation who received a Choice Scholarship or Voucher for the 2011-2012 and 2012-2013 school years.
2. The name and address of parents of students from the Monroe County Community School Corporation who received an approval letter from the Indiana Department of Education notifying them their child was approved for a Choice Scholarship or voucher for the 2011-2012 and 2012-2013 academic school years.
3. The amount of the Choice Scholarship or Voucher award each Monroe County Community School Corporation student received for the 2011-2012 and 2012-2013 school years.

This request was denied on October 21, 2013. Choice Scholarship awards are authorized by the general assembly in Ind. Code § 20-51-4 *et. seq.* providing eligible families with

tuition remission at participating schools. Scholarships are pro-rated according to need. In fiscal years 2011-2013, the legislature has authorized 22,500 awards to Indiana students.

The Department of Education has responded to your request setting forth the justifications as to why Ms. Keck's public records request was denied. Its response is attached to this Opinion. The Department stated several arguments against disclosure which will be addressed below.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* Ind. Code § 5-14-3-1. The Indiana Department of Education is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

While the APRA does not specifically prohibit the disclosure of any of the records in Ms. Keck's request, the APRA recognizes other Federal and State privacy laws that would add to the list of exceptions for withholding documents. Specifically, as indicated in the Department's response, the APRA defers to other statutes in Ind. Code § 5-14-3-(a)(1) and (3).

Indiana schools as well as the Indiana Department of Education are subject to the Federal Educational Rights and Privacy Act ("FERPA"). Educational records are generally exempt from disclosure except for very limited circumstances. School vouchers are not specifically addressed in the FERPA; however, the FERPA does speak to personally identifiable records. "Personally identifiable information" includes, but is not limited to, a list of personal characteristics that would make the student's identity easily traceable, or other information that would make the student's identity easily traceable. 34 C.F.R. § 99.3.

The first two categories of records requested clearly contain information that makes the student easily traceable. Under the "directory information" exception of the FERPA, the law allows disclosure of names and addresses of students. It is an "opt-out" disclosure meaning the student or parent must affirmatively state that they do not want the information released. 34 CFR § 99.37. Directory information also includes "awards received" as directory information. I have identified several state universities that include scholarships as award information, but I have not been able to identify any public school systems that do so.

Please note that the purpose of FERPA is set of regulations regarding funding to public schools. If a school chooses to comply with FERPA, they are eligible for funding. If not, the Federal funding stream may cease. There are no civil or criminal penalties for releasing the information on the Federal level. It is at the school's discretion what

information they choose to include in their directory information. Naturally, schools would be cautious in determining how broad to construe the statute when releasing information lest they risk losing funding. It should be noted that directory information is a discretionary release by the school. It is not mandated by the FERPA; therefore, the educational institution may decide what information, if any, it may release.

The term "education records" is defined as those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C.S. § 1232g(a)(4)(A). Ms. Keck is requesting information that may be part of the educational record and not merely directory information. A nexus between scholarship information and educational records can reasonably be drawn. Releasing the names of parents who use the vouchers on behalf of the child would also potentially invade the privacy of the student as they could be easily traceable. The Department of Education is justified in withholding the records at their discretion.

Finally, the request seeks the amount of the scholarship award each student received. It is possible that the Department of Education or the school corporation has a non-identifying number assigned to each student. If that is the case, then it would be proper for the Department or the school corporation to release those records. In fact, it is prudent for the Department to release that portion of the request even though other records were withheld. They have also extended an invitation to submit a request regarding aggregate data. It is my hope that some of these solutions would accomplish your goal following public money going to families under this program.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

cc: Ms. Katie Williams-Briles