

## **AACS LEGAL REPORT**

### **STUDENT RECORDS:**

#### **"CAN WE WITHHOLD STUDENT RECORDS FOR NON-PAYMENT OF TUITION?"**

---

##### **I. INTRODUCTION**

Many AACS Schools have a policy which states that a student's tuition and other school-related expenses must be paid in full before that student's records will be released to another school. In some situations, a transferring student's outstanding bill will be small, and the School may simply decide to "write off" the amounts owed to the School. In other cases, the School may agree to send the records to the next school if the parents agree to make payments on their debt after the student has transferred. Nevertheless, what happens if a School must enforce its policy of withholding records until the student's bill has been paid in full? Is this legal?

In this Report, we will discuss the concept of establishing a written policy to address the issue of withholding a transferring student's records for non-payment of tuition. In addition, we will discuss certain questions that may arise when your School is forced to enforce this policy.

##### **II. DISCUSSION**

Billy Debtor has been a student in your School since kindergarten, and he recently completed his 8th grade year. During the summer, Billy's family decides they can no longer afford the tuition at a Christian School. Shortly before his 9th grade year is to begin, Billy's mother calls your School and asks that Billy's records be forwarded to Local Community High School.

Unfortunately, the Debtor family owes the School \$6,000.00 in past due tuition expenses. Mr. Debtor has been in and out of work during the past few years, and the School has allowed Billy

to stay in School even though the Debtor's bill has continued to grow. Is the School authorized to withhold Billy's records until the \$6,000.00 debt is satisfied?

1. What does the School's written policy say?

The first question to ask yourself in connection with this hypothetical situation is whether your School has a written policy which states that the School is authorized to withhold a transferring student's records for non-payment of tuition or other expenses. If your School does not have this type of written policy in place, then you should consider adopting such a policy for the future.

After you adopt a "records policy," you should publish the policy in the School handbook and in the School's initial student application and re-enrollment forms. The policy should be worded in such a way that, when parents sign the handbook agreement, the initial application, or a re-enrollment form, they are expressing their agreement in writing that the School is authorized to withhold a transferring student's records if money is owed on that student's account.

This signed statement should assist the School if a parent ever attempts to challenge the School's authority to withhold student records. For your reference, we have provided sample policy language at the end of this Legal Report.

2. What about the Buckley Amendment?

At this point you might be asking yourself, "What's the Buckley Amendment?" The Buckley Amendment is part of a federal statute called the Family Educational Rights and Privacy Act. Among other things, the Buckley Amendment gives parents the right to inspect their student's records, and it also gives parents the opportunity for a due process hearing if a request to inspect records is denied. More importantly, the Buckley Amendment requires schools to provide copies of

a student's records to the parents if the failure to do so would prevent a student or parent from having access to the records.

**PLEASE NOTE, HOWEVER, THAT THE BUCKLEY AMENDMENT APPLIES ONLY TO SCHOOLS THAT ACCEPT FEDERAL FUNDS. THEREFORE, IF YOUR SCHOOL DOES NOT ACCEPT ANY TYPE OF FEDERAL FUNDING, THEN IT IS NOT SUBJECT TO THE REQUIREMENTS OF THE BUCKLEY AMENDMENT.**

For this reason, your School may not be required to provide copies of student records to a parent who still owes you money, even though the public schools in your area would be required to provide such records.

3. What about the laws in my own State?

As you know, a consideration of the education laws in each individual State is beyond the scope of this Legal Report. For that reason, you should have a local attorney check the laws in your State and in your county or township to determine whether a local statute or ordinance prohibits your School from withholding student records for the non-payment of tuition. In other words, even though you may not be subject to the Buckley amendment, which is a federal statute, you may be subject to a State or local version of the Buckley amendment.

Even if your State or local governmental unit does have a statute that seemingly addresses this situation, you should look at the statute carefully to determine whether it applies to your School. For example, although some States have their own version of the Buckley amendment - which requires schools to provide copies of student records to parents who cannot otherwise obtain copies of the records - these State statutes often apply only to schools that accept some type of State funding or to schools that are governed by the State Department of Education. If your School does

not accept State funds and it is not governed by the State Department of Education, then it may not be required to comply with a State version of the Buckley amendment.

On the other hand, you may have a State statute that specifically allows you to withhold records until a student's bill has been paid in full. If that is the case, you should have a copy of this statute on file in the event a parent of a transferring student attempts to question the School's authority to withhold records.

4. What happens if the parents are divorced - does a non-custodial parent have a right to a student's records?

If you are going to release a transferring student's records to his or her parents, then you should release those records to the custodial parent. Of course, many divorced parents have joint custody, where, for example, the mother will have custody during the week and the father will have custody during two weekends of the month. Under this scenario, you should produce the records to the mother, as she has main custody of the child and she is probably responsible for making the decision as to where the child will go to school.

When parents are divorced and some dispute arises with respect to records, visits by the non-custodial parent, or some other situation with the child, then you should ask for a copy of the divorce decree, settlement agreement, or other legally binding document which governs the custody issue. You should keep a copy of this document in the student's file and follow its requirements on the custody issue. You also may need to produce this document to local law enforcement authorities if the non-custodial parent attempts to cause a problem at the School. If you have this documentation on file, then you will better be able to determine who is entitled to the student's records.

5. Should we always withhold a student's records for non-payment of tuition?

Probably not. If a parent has no other way to get the student's records and the transferee school is refusing to grant admission to the student, then the parent could bring a lawsuit against the School in an effort to get the records. Under this scenario, the parent may be able to obtain an injunction requiring the School to produce the records, if the parent can show that withholding the records is causing "irreparable harm" to the student. Of course, you probably want to keep your School out of this kind of legal battle.

On the other hand, a call or a letter from the parents' lawyer does not mean that the parents are going to sue. Letters from lawyers are often used to intimidate a School into producing records when there is no legal requirement to do so. You will need to judge each situation on its own facts, but you should seek legal advice if the situation appears to be escalating. Also realize that you may have other options for collecting the debt, even if you do decide to produce the student's records.

### III. CONCLUSION

Many Schools have successfully collected past due tuition payments by withholding the records of a transferring student. This can be an effective way of forcing a family to pay its debts, as long as the School is not subject to a federal or State law prohibiting this practice. On the other hand, you may want to work out a payment plan or other type of arrangement with the parents in an effort to avoid a dispute over withholding a student's records.

If you have any questions or comments concerning the issues raised in this Legal Report, please feel free to contact Steve Cummings at the AACCS Legal Hotline number in Atlanta, Georgia - (404) 377-2340.

**DRAFT**

**SAMPLE LANGUAGE CONCERNING THE WITHHOLDING OF  
STUDENT RECORDS FOR NON-PAYMENT OF TUITION**

**In the event of withdrawal, transfer, or expulsion, the parents are responsible for full payment of tuition and other fees. Full payment of tuition and other fees must be made through the end of the calendar month for grades K-3 through 8, and through the end of the semester for grades 9 through 12. The School reserves the right to withhold report cards and student records until tuition and other fees have been paid in full. By signing the Student Handbook Agreement [or the initial Application for Enrollment or an Application for Re-enrollment], you are authorizing the School to withhold report cards and other records until tuition and other fees have been paid in full.**