

VIA ELECTRONIC AND OVERNIGHT MAIL

October 7, 2009

Hon. Lawrence Bliss, Senate Chair
Hon. Charles Priest, House Chair
Joint Standing Committee on Judiciary
c/o OPLA
13 State House Station
Augusta, Maine 04333

Re: An Act to Prevent Predatory Marketing Practices Against Minors (PL 2009, c. 230; LD 1183)

Dear Senator Bliss and Representative Priest:

This letter is in response to the call for comments regarding PL 2009, c. 230 issued by the Joint Standing Committee on Judiciary. We represent three Maine independent boarding schools, Gould Academy, Kents Hill School, and Hebron Academy. Collectively, we add over \$30 million annually to the Maine economy, much of it through enrollment of students who bring revenue from outside of Maine into Maine.

It is not difficult to imagine the impact on our schools, and consequently on our state's economy, if we were enjoined from responding by electronic or other means to a legitimate request for information on our schools from prospective students. Moreover, as outlined below, the wording of this law, as currently written, makes it unclear whether any form of admissions counseling activity on the part of our schools would be permissible. At the very least, Maine independent boarding schools will be placed at a significant competitive disadvantage relative to our peer schools in other states.

1. How Does the Law Implicate Independent Boarding Schools in Maine?

First, the law makes it “unlawful for a person to knowingly collect or receive health related information or personal information for marketing purposes from a minor without first obtaining parental consent of that minor’s parent or legal guardian.”

“Personal information” means “individually identifiable information,” including “an individual’s first name, or first initial, and last name.”

“Marketing purposes” means “the purposes of marketing or advertising products, goods or services to individuals.”

The implication of the law is that when a prospective student initiates contact with one of our schools requesting information regarding matriculation at our school, and we comply with that request either in electronic format or by hard copy, the school would be in violation of the statute unless it has obtained verifiable parental consent. This would represent a comprehensive change in the way our educational institution distributes information about our services and fundamentally alter communication between prospective students and our school.

Second, the Act prohibits predatory marketing. Predatory marketing is characterized by the use of “personal information regarding a minor for the purpose of marketing a product or service to that minor or promoting any course of action for a minor relating to a product.”

“Promoting any course of action” encompasses virtually every form of public relations and marketing available to educational institutions with respect to prospective and current students. The prohibition against “predatory marketing” does not even allow for marketing to a minor where the educational institution obtains parental consent. The implication is an absolute bar on Gould and other educational institutions from promoting any course of action regarding our services to any minor.

2. Analysis of Testimony at the Public Hearing

The original bill, as initially submitted, was limited to “health-related information” and barred the collection, receipt and use of health related information “over the Internet or any wireless communications device.” It was amended in committee to also apply to “personal information” and marketing activities generally.

It is my understanding that those testifying at the public hearing expressed concerns regarding the use of social electronic media to market medical products to children. None of those testifying articulated any concern regarding the marketing of the services of educational institutions to minors.

3. Suggested Courses of Action for the Committee

The reach of the Act as written and enacted far exceeds the scope of the LD’s original language. Educational institutions rely heavily on establishing relationships with prospective students and once those students have matriculated, communicating with those students in a variety of ways. Any reworking of this law should consider the effect it will have on the historical and customary communications between educational institutions and their current and future students. With this goal in mind, we suggest the following:

A. Repeal of the law and reconsideration of the policy objectives of the original Act.

With this approach, the legislature could consider how to draft the law more narrowly to achieve its policy goals. The original bill and testimony in support of the bill addressed the collection, receipt and use of a minor’s health related information via wireless

communications devices and the Internet. It would make sense to draft the law with this policy goal in mind.

B. Create an exception for educational institutions.

In the event that the legislature opts to amend, rather than repeal the law, we suggest that an exception for educational institutions be created that would permit the collection and transfer of a minor's personal information for the purpose of providing minors with information regarding the services and programs offered by the institution. In addition, such an exception should allow the educational institution to collect, transfer and use information to provide services to students with which it already has a "customer" relationship. This exception would allow an educational institution to update its students about new or expanding programs.

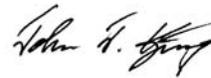
Thank you for seeking feedback on this issue. If you any questions, do not hesitate to contact us.

Sincerely,



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