



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2503/2
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2015 SENATE BILL 353

October 29, 2015 – Introduced by Senators DARLING, WANGGAARD, BEWLEY, GUDEX, HARSDORF, C. LARSON, LASSA, OLSEN, PETROWSKI and L. TAYLOR, cosponsored by Representatives BALLWEG, GENRICH, HORLACHER, HUTTON, JOHNSON, KITCHENS, KNODL, MURPHY, A. OTT, RODRIGUEZ, STEFFEN and SUBECK. Referred to Committee on Health and Human Services.

1 **AN ACT** *to amend* 118.125 (2) (intro.); and *to create* 115.298 and 118.125 (2) (q)
2 of the statutes; **relating to:** disclosure of pupil records that are pertinent to
3 addressing a pupil’s educational needs to the Department of Children and
4 Families, a county department of human services or social services, or a tribal
5 organization that is legally responsible for the care and protection of the pupil.

Analysis by the Legislative Reference Bureau

Under current law, pupil records maintained by a public school are confidential and may be disclosed only under certain exceptions to that requirement, including an exception that requires a school board to disclose pupil records to the Department of Children and Families (DCF), the Department of Corrections, a county department of human services or social services (county department), or a licensed child welfare agency in compliance with an order of the court assigned to exercise jurisdiction under the Children’s Code and the Juvenile Justice Code (juvenile court).

Recently, the federal Uninterrupted Scholars Act amended the federal Family Educational Rights and Privacy Act of 1974 (commonly referred to as “FERPA”) to permit educational records to be disclosed to a caseworker or other representative of an agency or tribal organization who has the right to access a student’s case plan, when the agency or tribal organization is legally responsible for the care and protection of the student, provided that: 1) the educational records will not be disclosed by the agency or tribal organization, except to an individual or entity

SENATE BILL 353

engaged in addressing the student's needs and authorized by the agency or tribal organization to receive that disclosure; and 2) the disclosure is consistent with state or tribal laws applicable to protecting the confidentiality of a student's records.

This bill permits a school board, on request, to disclose pupil records that are pertinent to addressing a pupil's educational needs to a caseworker or other representative of DCF, a county department, or a tribal organization that is legally responsible for the care and protection of the pupil, if the caseworker or other representative is authorized by DCF, that county department, or that tribal organization to access the pupil's case plan. The bill also permits a school board to enter into a memorandum of understanding (MOU) with a county department or tribal organization, and the Department of Public Instruction (DPI) to enter into a MOU with DCF, that permits that disclosure of pupil records. DCF, a county department, or a tribal organization that receives pupil records under the bill may not further disclose those pupil records or any personally identifiable information contained in those pupil records except as follows:

1. To a person who is engaged in addressing the pupil's educational needs, who is authorized by DCF, that county department, or that tribal organization to receive that disclosure, and to whom that disclosure is authorized under state or tribal law.

2. Upon request, to any court of this state or of the United States that needs to review those records or that information for the purpose of addressing the educational needs of a pupil who is the subject of a proceeding in that court.

3. In response to an order of a juvenile court conducting temporary physical custody proceedings, mental health commitment or protective placement proceedings, proceedings related to waiver of juvenile court jurisdiction over a juvenile alleged to have violated a criminal law, proceedings related to a child, unborn child, or juvenile in need of protection or services petition, a termination of parental rights petition, or a delinquency petition, or dispositional proceedings under the Children's Code or the Juvenile Justice Code; in response to an order of a court of criminal jurisdiction that has original jurisdiction over a juvenile alleged to have violated a criminal law; or in response to a subpoena issued in such a proceeding, to any person who is engaged in addressing the educational needs of the pupil and who is authorized to receive that disclosure under that order or subpoena.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 115.298 of the statutes is created to read:

2 **115.298 Disclosure of pupil records.** (1) (a) The department of public
3 instruction may enter into a memorandum of understanding with the department
4 of children and families that permits the department of public instruction to disclose
5 information contained in pupil records, as defined in s. 118.125 (1) (d), that is

SENATE BILL 353

1 pertinent to addressing a pupil's educational needs to a caseworker or other
2 representative of the department of children and families, a county department
3 under s. 46.215, 46.22, or 46.23, or a tribal organization, as defined in 25 USC 450b
4 (L), that is legally responsible for the care and protection of the pupil, if the
5 caseworker or other representative is authorized by that department, county
6 department, or tribal organization to access the pupil's case plan.

7 (b) A school board may enter into a memorandum of understanding with a
8 county department under s. 46.215, 46.22, or 46.23 or a tribal organization, as
9 defined in 25 USC 450b (L), that permits the school board to disclose information
10 contained in pupil records as provided under s. 118.125 (2) (q).

11 (2) A department, county department, or tribal organization that receives
12 information contained in pupil records under sub. (1) (a) or (b) may not further
13 disclose that information except as follows:

14 (a) To a person who is engaged in addressing the pupil's educational needs, who
15 is authorized by that department, county department, or tribal organization to
16 receive that disclosure, and to whom that disclosure is authorized under s. 118.125
17 or under a substantially similar tribal law.

18 (b) Upon request, to any court of this state or of the United States that needs
19 to review those records or that information for the purpose of addressing the
20 educational needs of a pupil who is the subject of a proceeding in that court.

21 (c) In response to an order of a court conducting proceedings under s. 48.135,
22 48.21, 938.135, 938.18, 938.183, or 938.21, proceedings related to a petition under
23 s. 48.13, 48.133, 48.42, 938.12, or 938.13, or dispositional proceedings under subch.
24 VI or VIII of ch. 48 or subch. VI of ch. 938 or in response to a subpoena issued in such
25 a proceeding, to any person who is engaged in addressing the educational needs of

SENATE BILL 353

1 the pupil and who is authorized to receive that disclosure under that order or
2 subpoena. Except as provided in 20 USC 1232g (b) (2) (B), a department, county
3 department, or tribal organization that is issued an order or subpoena described in
4 this paragraph shall provide notice of the order or subpoena to the pupil's parent or
5 guardian before complying with the order or subpoena.

6 **SECTION 2.** 118.125 (2) (intro.) of the statutes is amended to read:

7 118.125 (2) (intro.) CONFIDENTIALITY AND DISCLOSURE OF PUPIL RECORDS. (intro.)
8 All pupil records maintained by a public school shall be confidential, except as
9 provided in pars. (a) to ~~(p)~~ (q) and sub. (2m). The school board shall adopt policies
10 to maintain the confidentiality of such records and may adopt policies to promote the
11 disclosure of pupil records and information permitted by law for purposes of school
12 safety.

13 **SECTION 3.** 118.125 (2) (q) of the statutes is created to read:

14 118.125 (2) (q) On request, a school board may disclose pupil records that are
15 pertinent to addressing a pupil's educational needs to a caseworker or other
16 representative of the department of children and families, a county department
17 under s. 46.215, 46.22, or 46.23, or a tribal organization, as defined in 25 USC 450b
18 (L), that is legally responsible for the care and protection of the pupil, if the
19 caseworker or other representative is authorized by that department, county
20 department, or tribal organization to access the pupil's case plan. A department,
21 county department, or tribal organization that receives pupil records under this
22 paragraph may not further disclose those pupil records or any personally identifiable
23 information contained in those pupil records except as follows:

24 1. To a person who is engaged in addressing the pupil's educational needs, who
25 is authorized by that department, county department, or tribal organization to

SENATE BILL 353

1 receive that disclosure, and to whom that disclosure is authorized under this section
2 or under a substantially similar tribal law.

3 2. Upon request, to any court of this state or of the United States that needs
4 to review those records or that information for the purpose of addressing the
5 educational needs of a pupil who is the subject of a proceeding in that court.

6 3. In response to an order of a court conducting proceedings under s. 48.135,
7 48.21, 938.135, 938.18, 938.183, or 938.21, proceedings related to a petition under
8 s. 48.13, 48.133, 48.42, 938.12, or 938.13, or dispositional proceedings under subch.
9 VI or VIII of ch. 48 or subch. VI of ch. 938 or in response to a subpoena issued in such
10 a proceeding, to any person who is engaged in addressing the educational needs of
11 the pupil and who is authorized to receive that disclosure under that order or
12 subpoena. Except as provided in 20 USC 1232g (b) (2) (B), a department, county
13 department, or tribal organization that is issued an order or subpoena described in
14 this subdivision shall provide notice of the order or subpoena to the pupil's parent or
15 guardian before complying with the order or subpoena.

16 (END)