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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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**2013 Assembly Bill 618**

**Assembly Substitute  
Amendment 1 and Assembly  
Amendment 1 to Assembly  
Substitute Amendment 1**

*Memo published:* February 19, 2014

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2013 Assembly Bill 618 relates to disclosure of pupil data and records.

### Current Law

#### **Confidentiality of Pupil Records**

Current law requires a school board to disclose a pupil's records to certain Department of Public Instruction (DPI)- licensed school district employees, certain law enforcement officers, and other "school district officials" whom the school board determines have legitimate educational interests in the records.

Federal regulations adopted under the federal Family Educational Rights and Privacy Act ("FERPA") include similar provisions and also specify that a contractor, consultant, volunteer, or other party to whom a school has outsourced school services or functions may be designated as a "school district official" who can access records needed for legitimate educational purposes.

#### **Data-Sharing Protections**

Current state and federal law generally provide that pupil records are confidential and specify when such records may be disclosed. Current state law also requires establishment of a longitudinal data system of student data and requires certain agencies to exchange student and workforce data.<sup>1</sup> Current law provides certain privacy protections for student data shared between these agencies, and provides certain requirements and conditions under which these

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<sup>1</sup> These agencies include DPI, the Department of Children and Families, the Department of Workforce Development, the University of Wisconsin, the technical college system board, and the Wisconsin Association of Independent Colleges and Universities. [s. 115.297(1)(a), Stats.]

agencies may disclose student data to a public or private research organization to support an evaluation or study.

### **Assembly Bill 618**

Assembly Bill 618 also does all of the following:

- Excludes from the term “school district official” in state law a contractor, consultant, volunteer, or any other person to whom a school board has outsourced school services or functions, so that a school board is not required to disclose pupil records to these individuals.
- Provides a pupil or the parent or guardian of a minor pupil access to all the pupil’s records.<sup>2</sup>
- Provides that an entity that is lawfully provided with pupil data may provide personally identifiable pupil data to a public or private research organization only if the data-sharing protections under s. 115.297, Stats., are met and the pupil, or parent or guardian of a minor pupil, consents in writing.
- Allows the attorney general or any district attorney to bring an enforcement action for any violation of the law governing data-sharing between agencies and research organizations pursuant to s. 115.297, Stats.
- Requires an entity that lawfully receives pupil data to maintain a written record of all disclosures of personally identifiable student data made to the longitudinal data system, to another entity, or to a public or private research organization.
- Prohibits DPI from collecting any new information after the bill’s effective date for entry into the student information system (“SIS”) provided for in current law.
- Requires DPI to annually post on its website a comprehensive list of every distinct type of individual pupil data that it collects and the reason for collecting it.
- Prohibits DPI from providing individual pupil data to an agency of the federal government.

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<sup>2</sup> Current law allows a pupil or parent or guardian to access progress records, and to be shown behavioral records in the presence of a person qualified to explain and interpret the records. [s. 118.125 (a), (b), Stats.] These provisions are not altered by the substitute amendment.

## **Assembly Substitute Amendment 1**

### **Enforcement of Data-Sharing Protections**

Assembly Substitute Amendment 1 to Assembly Bill 618 (“the substitute amendment”) allows the attorney general or any district attorney to bring an enforcement action for any violation of the law governing data-sharing between agencies and research organizations pursuant to s. 115.297, Stats.

### **Data Security Plan**

The substitute amendment requires DPI to develop a detailed data security plan that includes all of the following:

- Guidelines for authorizing access to the SIS and to individual pupil data, including guidelines for authenticating authorized access.
- Privacy compliance standards.
- Privacy and security audits.
- Breach planning, notification, and procedures.
- Data retention and disposition policies.
- Data security policies, including electronic, physical, and administrative safeguards such as data encryption and employee training.

### **Posting of Pupil Data Points Collected**

The substitute amendment requires DPI to post on its website a comprehensive list of every distinct type of individual pupil data that it collects or may collect, and to inform the Governor and appropriate legislative standing committees each year by January 15 of any new individual data proposed to be included in the SIS.

### **Rule Listing Pupil Data Points Collected**

The substitute amendment requires DPI to promulgate a rule listing every distinct type of individual pupil data it collects, and revise the rule periodically to keep it up to date. It allows DPI to revise the rule using the emergency rule process if necessary to comply with federal law.

### **Provision of Individual Pupil Data to the Federal Government**

The substitute amendment prohibits DPI from providing individual pupil data to a federal agency.

### **Pupil Access to Own Records**

The substitute amendment allows a pupil or the parent or guardian of a minor pupil to be shown and provided with a copy of all the pupil's records other than behavioral records.

### **Confidentiality of Pupil Records**

Under the substitute amendment, a contractor, consultant, volunteer, or other party to whom a school has outsourced school services or functions may access records needed to do work on behalf of the school if the party satisfies all of these conditions:

- He or she performs a service or function for which the school board would otherwise use school district employees.
- He or she is under the direct control of the school board with respect to the use and maintenance of pupil records.
- He or she is subject to federal and state law requirements governing the use and redisclosure of personally identifiable information from pupil records.

The substitute amendment prohibits a school board from disclosing "personally identifiable information," as defined in FERPA, from pupil records, unless it obtains the agreement of the person receiving the records not to redisclose the information without pupil consent. The substitute amendment also prohibits use of the information for any purposes other than the purpose for which it was disclosed.

### **Assembly Amendment 1 to the Substitute Amendment**

#### **Confidentiality of Pupil Records**

Under Assembly Amendment 1 to the substitute amendment, the limitation on redisclosure and use of pupil data from pupil records applies only to disclosures involving a private vendor. Assembly Amendment 1 to the substitute amendment provides that any contract with a private vendor that governs databases, assessments, or instructional supports and that includes pupil data must include, in the contract, that the private vendor cannot disclose the data except as provided in the contract and cannot use the data except for the purposes for which the data was provided.

#### **Bill History**

Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1 were offered by Representative Pridemore. On February 12, 2014, the Assembly Committee on Education recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1 on a vote of Ayes, 11; Noes, 0; adoption of Assembly Substitute Amendment 1 on a vote of Ayes, 10; Noes, 1; and passage of Assembly Bill 618, as amended, on a vote of Ayes, 6; Noes, 5.

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