



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Assembly Bill 478

Senate Amendment 1

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BACKGROUND

With limited exceptions, Wisconsin statutes provide that pupil records¹ maintained by a public school be confidential. For example, if a child's attendance at school is a condition of a children in need of protection or services (CHIPS) or juvenile in need of protection or services (JIPS) order, the school board must notify the county child welfare department that is responsible for supervising the child within five days after the child violated this condition. [See s. 118.125 (2) (cm), Stats.]

Federal law also provides privacy protections of student education under the Family Education Rights and Privacy Act (FERPA). In order for a public school or public school district to receive funding from programs administered by the U.S. Department of Education, it must comply with FERPA. FERPA was recently amended by the Uninterrupted Scholars Act to permit educational records to be disclosed to a caseworker or other representative of a state or child welfare 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 of the protection of the student, provided that both of the following apply: (1) the education records will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs; and (2) such disclosure is consistent with state or

¹ The statutes define the term "pupil records" to mean all records relating to individual pupils maintained by a school but does not include any of the following: (1) notes or records maintained for personal use by a teacher or other person who is required by the state superintendent to hold a certificate, license, or permit if such records and notes are not available to others; (2) records necessary for, and available only to persons involved in, the psychological treatment of a pupil; or (3) law enforcement unit records. [s. 118.125 (1) (d), Stats.]

tribal laws applicable to protecting the confidentiality of such records. [20 U.S.C. s. 1232g (b) (1) (L).]

2015 ASSEMBLY BILL 478

2015 Assembly Bill 478 (the bill) amends the state statutes related to the confidentiality of pupil records to do all of the following:

- Authorizes the Department of Public Instruction (DPI) to enter into a memorandum of understanding (MOU) with the Department of Children and Families (DCF) to permit DPI to disclose information in the pupil records that are pertinent to addressing a pupil's educational needs to a caseworker or other representative of DCF, a county department of health and human services (county department), or tribal organization that is legally responsible for the care and protection of the pupil, if the caseworker or other representative is authorized by DCF, the county department, or tribal organization to access the pupil's case plan.
- Authorizes a school board to enter into an MOU with a county department or tribal organization to permit the school board to disclose information contained in the pupil records.
- Prohibits DCF, a county department, or tribal organization that receives information contained in a pupil record as provided by an MOU described above from further disclosing that information except as follows:
 - To a person who is engaged in addressing the pupil's education needs, who is authorized by DCF, the county department, or tribal organization to receive that disclosure, and to whom that disclosure is authorized under state or tribal law.
 - Upon request, to any state or federal court that needs to review the record or information for the purpose of addressing the educational needs of a pupil who is the subject of a proceeding in that court.
 - To any person who is engaged in addressing the educational needs of the pupil and who is authorized to receive the pupil record under either of the following: (1) an order of a juvenile court that is conducting certain specified proceedings under the Children's Code or Juvenile Justice Code²; or (2) a subpoena issued in such a proceeding. Except as provided under FERPA, DCF, a county department, or tribal organization that is issued an order or subpoena must provide notice of

² The bill specifies the following proceedings: (1) temporary physical custody; (2) mental health commitment or protective placement; (3) waiver of juvenile court jurisdiction over a juvenile alleged to have violated a criminal law; (4) a CHIPS, unborn CHIPS, or JIPS petition; (5) a termination of parental rights (TPR) petition; (6) a delinquency petition; or (7) a dispositional proceeding under the Children's Code or the Juvenile Justice Code.

the order or subpoena to the pupil's parent or guardian before complying with the order or subpoena.

SENATE AMENDMENT 1

Senate Amendment 1 to the bill amends the provision of the bill relating to an MOU entered into by a school board. Under the amendment, a school board may enter into an MOU with a county department or tribal organization that permits disclosure of information contained in the pupil records **in cases in which the pupil's parent or guardian, or the pupil if the pupil is an adult, does not grant permission for such disclosure.**

BILL HISTORY

On January 19, 2016, the Assembly passed the bill on a voice vote. On January 20, 2016, Senator Lazich introduced Senate Amendment 1 to the bill and the Senate voted on voice votes to both amend the bill, and to concur in the bill as amended.

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