

**1999 DRAFTING REQUEST**

**Bill**

Received: **09/14/1999**

Received By: **grantpr**

Wanted: **As time permits**

Identical to LRB:

For: **Public Instruction 6-5186**

By/Representing: **Michael TeRonde**

This file may be shown to any legislator: **NO**

Drafter: **grantpr**

May Contact: **Bob Paul, DPI**

Alt. Drafters:

Subject: **Education - state superintendent**

Extra Copies: **MJL**

**Pre Topic:**

No specific pre topic given

**Topic:**

Pupil records

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	grantpr 09/17/1999	csicilia 09/27/1999		_____			
/P1			martykr 09/28/1999	_____	lrb_docadmin 09/28/1999		
/P2	grantpr 11/19/1999	csicilia 11/22/1999		_____			S&L
/1			hhagen 11/23/1999	_____	lrb_docadmin 11/23/1999		S&L
/2	grantpr	csicilia	mclark	_____	lrb_docadmin		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/3	grantpr 12/15/1999	csicilia 12/15/1999	martykr 12/16/1999	_____	lrb_docadmin 12/16/1999	lrb_docadmin 01/12/2000	

FE Sent For:

01-21-00  
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<END>

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See Attached

*PA - please call this requester when ready for pick-up. Thanks. PG*

*Done MJB*

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*1/3 cjs WIS 99*    *Xm 12*    *JA 12*    *Sm 12*

<u>Yers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	11/24/1999	11/26/1999	11/29/1999	_____	11/29/1999		

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Alt. Drafters:

Subject: Education - state superintendent

Extra Copies: MJL

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**Topic:**

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regester when  
ready for  
pick-up.  
Thanks.  
PK*

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*11/26 MAC/KM  
MAC 11/29*

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1?	grantpr	1 9/23 jlg 1 9/23 gjs	1 9/28 1 9/28	2 9/28 2 9/28			

FE Sent For:

<END>

Rec'd  
9/14/99

PUPIL RECORDS MODIFICATIONS

DRAFTING INSTRUCTIONS TO AMEND 118.125 and 19.35 Stats.

First Change, to conform 118.125(2)(g) with FERPA and specifically authorize release of pupil records to certain state agencies performing audits and evaluations while continuing to insure confidentiality:

- Authorize the department to grant access to otherwise confidential pupil records to the audit bureau, fiscal bureau or other state agencies designated by the state superintendent in connection with an audit or evaluation of an applicable (K-12) state or federally supported education program. ?
- Specifically authorize department release of pupil records to the Comptroller General of the United States or Secretary of the U.S. Department of Education, in connection with an audit or evaluation of an applicable state or federally-supported education program or the enforcement of applicable state or federal legal requirements in connection with such programs. 34 CFR 99.31(a)(3)  
34 CFR 99.35
- Require that when personally identifiable pupil records data are collected by any such officials, the data shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation and enforcement of state or federal requirements. 11

Second change, 19.35(2)(g):

re 19.35(c)

- In responding to open records requests for pupil data, to authorize the department which must separate confidential pupil names from non-confidential pupil data, to charge the requester the actual, necessary and direct cost for such editing when necessary to preserve pupil and parent confidentiality.

see 72 AG 99 opinion

9/14/99 Bob Paul:  
> Del. LFB & LAB } put in DN's  
> leave in st sup }  
(6)

Peter - if you have questions on these draft instructions, please call Bob Paul, 6-9353. Thanks you, Mike Fedoruk 6-5186

**CONFIDENTIAL PUPIL RECORDS – STUDIES – CONFORMITY WITH FERPA**

**COST RECOVERY UNDER OPEN RECORDS**

**Amend 118.125(2)(g)**, to conform with FERPA (federal Family Education Rights and Privacy Act), identify specific state agencies for audits and evaluations and authorize actual cost recovery for modifying pupil records to retain confidentiality in responding to open records requests:

- 1) adding the underlined portion to this text to conform with FERPA:

“(2)(g)2. ... The department shall keep confidential all pupil records provided to the department by a school board except that the department may grant access to pupil records by the state audit and fiscal bureaus, to other appropriate state agencies as determined by the state superintendent and to the Comptroller General of the United States or the Secretary of the U.S. Department of Education in connection with an audit or evaluation of an applicable state or federally-supported education program or the enforcement of applicable state or federal legal requirements in connection with such programs. When collection of personally identifiable information is specifically authorized by state or federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of state or federal legal requirements.

- 2) add new provision relating to recovering costs for screening pupil names off confidential pupil records in response to open records requests for pupil data:

(2)(g)4.: The department may charge the actual, necessary and direct cost for redacting pupil names from pupil records when necessary to preserve pupil and parent confidentiality in response to a request for pupil data under s. 19.35.

## PUPIL RECORDS MODIFICATIONS

### DRAFTING INSTRUCTIONS TO AMEND 118.125 and 19.35 Stats.

First Change, to conform 118.125(2)(g) with FERPA and specifically authorize release of pupil records to certain state agencies performing audits and evaluations while continuing to insure confidentiality:

- Authorize the department to grant access to otherwise confidential pupil records to the audit bureau, fiscal bureau or other state agencies designated by the state superintendent in connection with an audit or evaluation of an applicable ~~(K-12)~~ <sup>preschool</sup> state or federally supported education program.
- Specifically authorize department release of pupil records to the Comptroller General of the United States or Secretary of the U.S. Department of Education, in connection with an audit or evaluation of an applicable state or federally-supported education program or the enforcement of applicable state or federal legal requirements in connection with such programs.
- Require that when personally identifiable pupil records data are collected by any such officials, the data shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation and enforcement of state or federal requirements.

Second change, 19.35(2)(g):

- In responding to open records requests for pupil data, to authorize the department which must separate confidential pupil names from non-confidential pupil data, to charge the requester the actual, necessary and direct cost for such editing when necessary to preserve pupil and parent confidentiality.

**CONFIDENTIAL PUPIL RECORDS – STUDIES – CONFORMITY WITH FERPA**

**COST RECOVERY UNDER OPEN RECORDS**

**Amend** 118.125(2)(g), to conform with FERPA (federal Family Education Rights and Privacy Act), identify specific state agencies for audits and evaluations and authorize actual cost recovery for modifying pupil records to retain confidentiality in responding to open records requests:

- 1) adding the underlined portion to this text to conform with FERPA:  
“(2)(g)2. ... The department shall keep confidential all pupil records provided to the department by a school board except that the department may grant access to pupil records by the state audit and fiscal bureaus, to other appropriate state agencies as determined by the state superintendent and to the Comptroller General of the United States or the Secretary of the U.S. Department of Education in connection with an audit or evaluation of an applicable state or federally-supported education program or the enforcement of applicable state or federal legal requirements in connection with such programs. When collection of personally identifiable information is specifically authorized by state or federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of state or federal legal requirements.
  
- 2) add new provision relating to recovering costs for screening pupil names off confidential pupil records in response to open records requests for pupil data:  
(2)(g)4.: The department may charge the actual, necessary and direct cost for redacting pupil names from pupil records when necessary to preserve pupil and parent confidentiality in response to a request for pupil data under s. 19.35.

1999

Date (time) needed

LRB - 3626, P1

BILL

DN

PK : cjs :  
+  
lig

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to: *the disclosure of pupil records by the departments of public instruction.*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

**Analysis by the Legislative Reference Bureau**

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: . . . . . create → anal: → title: → head

For the subheading [old =S], execute: . . . . . create → anal: → title: → sub

For the sub-subheading [old =P], execute: . . . . . create → anal: → title: → sub-sub

*This is a preliminary draft. An analysis will be provided on a later version.*

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

SECTION #.

Section #. 118.125 (2) (g) 2. of the statutes is amended to read:

118.125 (2) (g) 2. Upon request by the department, the school board shall provide the department with any information contained in a pupil record that is in connection with an audit or evaluation of a federal or state-supported education program or that is required to determine compliance with requirements under chs. 115 to 121. ~~The department shall keep confidential all pupil records provided to the department by a school board.~~ federal law relating to such a program

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239.

for the enforcement of or

SEC. CR. 118.125<sup>5</sup> (1)<sup>x</sup>

118.125<sup>5</sup> (1) { CONFIDENTIALITY OF INFORMATION PROVIDED TO } (CS)

(CS) DEPARTMENT. (a) The department shall keep information relating to individual confidential all pupils that is provided to the department except that the department may disclose such information contained in a pupil record to the <sup>U.S.</sup> comptroller general ~~and~~ the ~~United States~~ or the U.S. secretary of education, or to appropriate state agencies, as determined by the state superintendent, in connection with an audit or evaluation of a federal or state-supported education program or <sup>for</sup> the enforcement of <sup>or</sup> compliance with ~~the~~ federal ~~legislation~~ <sup>law</sup> requirements relating to such a program.





~~§~~ (b) ~~Intercept~~ ~~Any~~ A person to whom  
information is disclosed <sup>under</sup> ~~under~~ par. (a) ✓ shall  
ensure that the information is protected  
✓ in a manner that does not permit <sup>the</sup> personal  
identification of ~~people~~ individuals by <sup>persons</sup> other  
than those specified in par. (a) ✓ and  
shall destroy the information when <sup>it is</sup> no  
longer needed for the purposes <sup>s</sup> specified  
in par. (a) ✓.

~~§~~ ↓

560 CR  
(b) (5) (D) (i) In addition to the fees specified in s. 19.35 (3), the department ~~of~~ ~~public instruction~~ may impose a fee upon a requester of a copy of a record that does not exceed the actual, necessary and direct cost of deleting from the <sup>requested</sup> record information that is prohibited from being disclosed under this section.  
s. 19.35 (3) or 20 USC 1232g.

(End) ✓

DN

#1. Note that I modified s. 118.125 (2)(g)2.  
to conform to 34 CFR 99.35 (a). OK?

#2. I deleted specific mentions of the  
Legislative Fiscal Bureau and Legislative  
Audit Bureau in s. 118.125 (7) (a) because  
~~the~~ disclosure to <sup>these</sup> such agencies does not  
appear to be allowed under 34 CFR  
99.31 (a)(3) (iii).

As you requested,  
#3. I included "appropriate state  
agencies determined by the state superintendent"  
in s. 118.125 (7) (a) even though 34 CFR 99.31 (a)  
(3) (iii) specifies "state and local educational  
agencies". You may wish to use the  
latter phrase instead of the former. If  
you wish to bar disclosure by the department



to local agencies, ~~insert the word~~  
~~"educational" before~~ you may wish  
to use the phrase "state educational  
agencies" to ensure compliance with  
federal law.

¶ 4. I couldn't identify a PR  
appropriation that could be used to take  
in and spend the <sup>revenue</sup> revenue derived from  
the fee proposed in this draft. Do you  
want to create one?

PG

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3626/P1dn  
PG:cjs&jlg:km

September 28, 1999

1. Note that I modified s. 118.125 (2) (g) 2. to conform to 34 CFR 99.35 (a). OK?
2. I deleted specific mention of the Legislative Fiscal Bureau and Legislative Audit Bureau in s. 118.125 (7) (a) because disclosure to these agencies does not appear to be allowed under 34 CFR 99.31 (a) (3) (iii).
3. As you requested, I included "appropriate state agencies determined by the state superintendent" in s. 118.125 (7) (a) even though 34 CFR 99.31 (a) (3) (iii) specifies "state and local educational agencies". You may wish to use the latter phrase instead of the former. If you wish to bar disclosure by the department to local agencies, you may wish to use the phrase "state *educational* agencies" to ensure compliance with federal law.
4. I couldn't identify a PR appropriation that could be used to take in and spend the revenue derived from the fee proposed in this draft. Do you want to create one?

Peter R. Grant  
Managing Attorney  
Phone: (608) 267-3362  
E-mail: Peter.Grant@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3626/P1dn  
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3. As you requested, I included "appropriate state agencies determined by the state superintendent" in s. 118.125 (7) (a) even though 34 CFR 99.31 (a) (3) (iii) specifies "state and local educational agencies". You may wish to use the latter phrase instead of the former. If you wish to bar disclosure by the department to local agencies, you may wish to use the phrase "state *educational* agencies" to ensure compliance with federal law.
4. I couldn't identify a PR appropriation that could be used to take in and spend the revenue derived from the fee proposed in this draft. Do you want to create one?

Peter R. Grant  
Managing Attorney  
Phone: (608) 267-3362  
E-mail: Peter.Grant@legis.state.wi.us

11/19/99  
TC from Mike at DPI : add  
local educational agencies on p. 2, l. 6.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3626/27  
PG:cjs&jlg:km

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

*Page*

1 AN ACT *to amend* 118.125 (2) (g) 2.; and *to create* 118.125 (7) of the statutes;  
2 relating to: the disclosure of pupil records by the department of public  
3 instruction.

---

*Analysis by the Legislative Reference Bureau*

~~This is a preliminary draft. An analysis will be provided on a later version.~~ (attached)

---

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

4 SECTION 1. 118.125 (2) (g) 2. of the statutes is amended to read:  
5 118.125 (2) (g) 2. Upon request by the department, the school board shall  
6 provide the department with any information contained in a pupil record that relates  
7 to is in connection with an audit or evaluation of a federal or state-supported  
8 education program or ~~that is required to determine~~ for the enforcement of or  
9 compliance with ~~requirements under chs. 115 to 121.~~ The department shall keep  
10 confidential all pupil records provided to the department by a school board federal  
11 law relating to such a program.

1           **SECTION 2.** 118.125 (7) of the statutes is created to read:

2           **118.125 (7) CONFIDENTIALITY OF INFORMATION PROVIDED TO DEPARTMENT.** (a) The  
3 department shall keep confidential all information relating to individual pupils that  
4 is provided to the department except that the department may disclose such  
5 information to the U.S. comptroller general or the U.S. secretary of education, or to  
6 appropriate state agencies as determined by the state superintendent, in connection  
7 with an audit or evaluation of a federal or state-supported education program or for  
8 the enforcement of or compliance with federal law relating to such a program.

9           (b) A person to whom information is disclosed under par. (a) shall ensure that  
10 the information is protected in a manner that does not permit the personal  
11 identification of individuals by persons other than those specified in par. (a) and shall  
12 destroy the information when it is no longer needed for the purposes specified in par.  
13 (a).

14           (c) In addition to the fees specified in s. 19.35 (3), the department may impose  
15 a fee upon a requester that does not exceed the actual, necessary and direct cost of  
16 deleting from the requested record information that is prohibited from being  
17 disclosed under this section or 20 USC 1232g.

18

(END)

*and local educational*



## ANALYSIS

¶ Under <sup>state and federal</sup> current law, with certain exceptions, all pupil records maintained by

a public school ~~must be kept~~ are confidential.

One exception in state law requires a school board to ~~not~~ <sup>provide</sup> to the department of public instruction <sup>(DPI)</sup> any information contained in a pupil record that relates to an audit or evaluation of a federal or ~~state-supported~~ state-supported program or that is required to determine compliance with requirements in ~~the~~ the state laws relating to schools.

¶ This bill conforms this <sup>exception</sup> to ~~the~~ language federal law (see 20 USC 1232g <sup>and</sup> ~~and~~ 34 CFR 99.35(a)). Under the bill, a school board must provide DPI with any information contained in a <sup>pupil</sup> pupil record that is in

connection with an audit or evaluation of a federal or state-supported education program or for the enforcement of or compliance with federal law relating to such a program.

¶ The bill also allows ~~the~~ <sup>DPI</sup> ~~DPI~~ <sub>===</sub> to disclose <sup>such</sup> information ~~provided~~ <sup>to</sup> ~~it~~ to the U.S. <sup>Comptroller</sup> Comptroller General or the U.S. Secretary of Education, or to <sup>appropriate</sup> ~~appropriate~~ state and local educational agencies, in connection with an <sup>audit</sup> ~~audit~~ or evaluation of a federal or state-supported education ~~program~~ or for the enforcement of or <sup>compliance</sup> ~~compliance~~ with federal law relating to such a <sup>program</sup> ~~program~~.

A person to whom information is disclosed

~~disclosure must keep it confidential~~  
~~ensure that the information~~  
may not permit additional disclosure and  
must destroy the information when it is  
no longer needed.

¶ Finally, the bill allows DPI to  
charge a ~~fee to request~~ person  
who asks for a copy of a <sup>record</sup> record a  
fee sufficient to cover the cost of  
deleting from the record information  
that is <sup>prohibited</sup> prohibited from being disclosed  
under state or federal law.

RE - SL

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 11/23/1999

To: Public Instruction (Michael TeRonde)

Relating to LRB drafting number: LRB-3626

**Topic**

Pupil records

**Subject(s)**

Education - state superintendent

1. **JACKET** the draft for introduction \_\_\_\_\_

in the **Senate** \_\_\_\_ or the **Assembly** \_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Peter R. Grant, Managing Attorney  
Telephone: (608) 267-3362

11/24/99 Bas Panel called. Change to "state agencies & LEAS, as determined by dp..." They realize it's not quite equivalent to full law, but they'll decide later.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3626/1 2

PG:cjs&jlg:hmh

5000

1999 BILL

- 1 **AN ACT to amend 118.125 (2) (g) 2.; and to create 118.125 (7) of the statutes;**  
2 **relating to: the disclosure of pupil records by the department of public**  
3 **instruction.**

---

***Analysis by the Legislative Reference Bureau***

Under current state and federal law, with certain exceptions, all pupil records maintained by a public school are confidential. One exception in state law requires a school board to provide to the department of public instruction (DPI) any information contained in a pupil record that relates to an audit or evaluation of a federal or state-supported program or that is required to determine compliance with requirements in the state laws relating to schools.

This bill conforms this exception to federal law (see 20 USC 1232g and 34 CFR 99.35 (a)). Under the bill, a school board must provide DPI with any information contained in a pupil record that is in connection with an audit or evaluation of a federal or state-supported education program or for the enforcement of or compliance with federal law relating to such a program.

The bill also allows DPI to disclose such information to the U.S. Comptroller General or the U.S. Secretary of Education, or to appropriate state<sup>agencies</sup> and local educational agencies, in connection with an audit or evaluation of a federal or state-supported education program or for the enforcement of or compliance with federal law relating to such a program. A person to whom information is disclosed may not permit additional disclosure and must destroy the information when it is no longer needed.

**BILL**

Finally, the bill allows DPI to charge a person who asks for a copy of a record a fee sufficient to cover the cost of deleting from the record information that is prohibited from being disclosed under state or federal law.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

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

1           SECTION 1. 118.125 (2) (g) 2. of the statutes is amended to read:

2           118.125 (2) (g) 2. Upon request by the department, the school board shall  
3 provide the department with any information contained in a pupil record that relates  
4 to is in connection with an audit or evaluation of a federal or state-supported  
5 education program or that is required to determine for the enforcement of or  
6 compliance with requirements under chs. 115 to 121. The department shall keep  
7 confidential all pupil records provided to the department by a school board federal  
8 law relating to such a program.

9           SECTION 2. 118.125 (7) of the statutes is created to read:

10          118.125 (7) CONFIDENTIALITY OF INFORMATION PROVIDED TO DEPARTMENT. (a) The  
11 department shall keep confidential all information relating to individual pupils that  
12 is provided to the department except that the department may disclose such  
13 information to the U.S. comptroller general or the U.S. secretary of education, or to  
14 appropriate state <sup>agencies</sup> and local educational agencies, as determined by the state  
15 superintendent, in connection with an audit or evaluation of a federal or  
16 state-supported education program or for the enforcement of or compliance with  
17 federal law relating to such a program.

18          (b) A person to whom information is disclosed under par. (a) shall ensure that  
19 the information is protected in a manner that does not permit the personal

**BILL**

1 identification of individuals by persons other than those specified in par. (a) and shall  
2 destroy the information when it is no longer needed for the purposes specified in par.  
3 (a).

4 (c) In addition to the fees specified in s. 19.35 (3), the department may impose  
5 a fee upon a requester that does not exceed the actual, necessary and direct cost of  
6 deleting from the requested record information that is prohibited from being  
7 disclosed under this section or 20 USC 1232g.

8

(END)

**From:** Robert Paul  
**To:** Michael TeRonde  
**Date:** Fri, Dec 10, 1999 1:46 PM  
**Subject:** Re: Pupil Records disclosure bill (LRB-3626/2)

Mike

1) There is nothing in state law re penalty for redisclosure. There is in federal regulation interpreting FERPA, beyond the provisions we already have of the record not permitting personal identification, and the record being required to be destroyed after use [both of which come from 34 CFR 99.35. The additional penalty is the one connected with controlled redisclosure to third parties, which is NOT a provision we are including. I suggest we stay simpler and more protective than FERPA by denying or forbidding redisclosure to **any** third parties and then provide the penalty to the second party, the one to whom we've disclosed. This means that any party or say state agency to whom we disclose, say for purposes of performing an evaluation, that party may not redisclose to any other party. That will restrict the second party somewhat, say if they wanted to subcontract. FERPA has provisions for this but it would make our bill somewhat longer and more complex. The penalty is denial of access to such pupil records for some years - the feds say 5; we could say 3.

2) Ergo I suggest the following changes to our draft:

a) on p. ~~2~~<sub>3</sub>, line 1, after "par.(a)" add: , is not disclosed to any other party

b) on p. ~~2~~<sub>3</sub>, line 4, change the sub (c) to sub (d)

c) on p. ~~2~~<sub>3</sub> line 4, add new sub (c): If the department determines that a party improperly rediscloses personally identifiable information from pupil records in violation of para. (b), the department may not allow that party access to personally identifiable information from pupil records for three years. [This language is adapted from 34 CFR 99.33(e)]

Do folks have any comments? Do we need to meet?

Pls advise.

Bob

>>> Michael TeRonde 12/10/99 11:30:14 AM >>>

Bob --

Cal and I visited with Sen. Erpenbach and his staff this morning about this draft. Since he is a leading privacy advocate in the Senate, we were asking him to support and sponsor the proposal.

The Senator and his staff were concerned about the re-release of information by a recipient individual or agency to other individuals or agencies. I pointed out that the bill (in Section 2) required a recipient to ensure that the information is protected in a way that personal identification is not permitted except to those specified in the created Section 118.125 (7) (a). The point is that at the very least this imposes a burden on the recipient regarding re-release.

This does not satisfy them. They are looking for something explicit in the law which prohibits re-release of information and which provides a penalty for re-release.

I need to get back to Senator Erpenbach's staff regarding this. Therefore my questions are:

1.) Is there something currently in the Wisconsin Statutes or in FERPA that would specifically address the re-release issue, including the provision of a penalty. If so, I believe they would be looking for specific statutory citations.

2.) If the answer to Question 1 is no, how might the bill be modified to address re-release and what might



be an appropriate penalty?

Thanks for looking into this. Please let me know if you need additional background information on our discussion with Senator Erpenbach and his staff.

CC: Calvin Potter; Regina Frank-Reece

Re: LRB-3626/2  
Peter - This is the  
language Bob Paul suggested  
for ~~1~~ a slash 3.  
(Red-bracketed). If  
you have questions,  
please contact Bob  
(6-9353) or me (~~6-5186~~)  
(6-5186). *Michael TeRonde*  
DPE

12/15/99

TC w/ Bob Paul, DOL.

q. why need p. 2 l. 19 - p. 3 l. 1

if draft is going to prohibit redisclosure  
completely?

A. Correct → delete.



1999 BILL

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2 **relating to:** the disclosure of pupil records by the department of public  
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*disclose the information to anyone else*  
*If the person discloses the information, DPI may not disclose information to that person for three years.*

**BILL**

Finally, the bill allows DPI to charge a person who asks for a copy of a record a fee sufficient to cover the cost of deleting from the record information that is prohibited from being disclosed under state or federal law.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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1           **SECTION 1.** 118.125 (2) (g) 2. of the statutes is amended to read:

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5 education program or that is required to determine for the enforcement of or  
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8 law relating to such a program.

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13 information to the U.S. comptroller general or the U.S. secretary of education, or to  
14 appropriate state agencies and local educational agencies, as determined by the state  
15 superintendent, in connection with an audit or evaluation of a federal or  
16 state-supported education program or for the enforcement of or compliance with  
17 federal law relating to such a program.

18           (b) A person to whom information is disclosed under par. (a) shall ~~ensure that~~  
19 <sup>not disclose</sup> the information is ~~protected in a manner that does not permit the personal~~

BILL

other  
to any person

1 ~~identification of individuals by persons other than those specified in par. (a)~~ and shall  
2 destroy the information when it is no longer needed for the purposes specified in par.

3 (a).

4 (d) In addition to the fees specified in s. 19.35 (3), the department may impose  
5 a fee upon a requester that does not exceed the actual, necessary and direct cost of  
6 deleting from the requested record information that is prohibited from being  
7 disclosed under this section or 20 USC 1232g.

8 (END)

II (c) If the department determines that a person to whom  
information is disclosed under par. (a) <sup>has</sup> disclosed  
the information in violation of par. (b), the  
department may not disclose information ~~to that~~  
~~person~~ relating to <sup>individual</sup> individual pupils to that  
person for 3 years from the date of the  
determination.

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 12/16/1999

To: Public Instruction

Relating to LRB drafting number: LRB-3626

Topic  
Pupil records

Michael  
TeRonde

Subject(s)  
Education - state superintendent

1. **JACKET** the draft for introduction Michael TeRonde  
in the **Senate**  or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached \_\_\_\_\_.  
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.  
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Peter R. Grant, Managing Attorney  
Telephone: (608) 267-3362