

## 2009 DRAFTING REQUEST

### Bill

Received: **09/25/2009**

Received By: **pgrant**

Wanted: **As time permits**

Identical to LRB:

For: **Administration 6-5468**

By/Representing: **Marta Skwarczek**

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

Drafter: **pgrant**

May Contact:

Addl. Drafters:

Subject: **Education - state superintendent  
Higher Education - tech. college  
Higher Education - UW System**

Extra Copies: **TKK  
MDK**

Submit via email: **YES**

Requester's email: **marta.skwarczek@wisconsin.gov**

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Statewide student database

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### Instructions:

See attached

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### 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> |
|--------------|----------------------|-----------------------|-----------------------|----------------|------------------------|-----------------|-----------------|
| /?           | pgrant<br>10/20/2009 | nmatzke<br>10/22/2009 |                       | _____          |                        |                 | State           |
| /P1          | pgrant<br>10/23/2009 | nmatzke<br>10/26/2009 | mduchek<br>10/22/2009 | _____          | mbarman<br>10/22/2009  |                 | State           |
| /1           | pgrant<br>10/26/2009 | nmatzke<br>10/26/2009 | mduchek<br>10/26/2009 | _____          | sbasford<br>10/26/2009 |                 | State           |

↓  
for Senate  
+ sent  
to Sen. Lehman's  
office  
- per Marta @ DOA

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|--------------|----------------|-----------------|-----------------------------------|----------------|-----------------------------------|------------------------|-----------------|
| /2           |                |                 | mduchek _____<br>10/26/2009 _____ |                | cduerst _____<br>10/26/2009 _____ | sbasford<br>10/27/2009 |                 |

FE Sent For: *at intro*  
*10/28*

<END>

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| /1           |                      | 1/2 nwn<br>10/26      | mduchek<br>10/26/2009 | _____          | sbasford<br>10/26/2009 |                 |                 |

*MD*  
*10/26*  
*MDes*  
*colleg*  
*Nov*

FE Sent For:

<END>

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FE Sent For:

*MD*  
10/26  
**<END>** *JS*

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|--------------|----------------|------------------|--------------|----------------|------------------|-----------------|-----------------|
| 1/?          | pgrant         | /PI nwn<br>10/21 | MD<br>10/21  | AS<br>JF       |                  |                 |                 |

FE Sent For:

<END>

**Grant, Peter**

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**From:** Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]

**Sent:** Thursday, September 24, 2009 5:33 PM

**To:** Grant, Peter

**Subject:** statewide student database- new draft

**Attachments:** Drafting instructions - draft 9-23-09.doc

Peter,

Please see the drafting instructions attached regarding a statewide student database. I am not sure which other drafters should be involved with this draft.

Thanks.

09/25/2009

STATEWIDE STUDENT DATABASE  
DRAFTING INSTRUCTIONS FOR LRB  
9/23/09

-DRAFT-

**Possible location:**

- Chapter 115.
- References to the new section would have to be included in chapters 36 and 38, which establish the authority of the Board of Regents and Wisconsin Technical College System (WCTS) Board.

**Policy goal:**

The Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USC s. 1232g) and its implementing regulations (34 CFR part 99) prohibit release of student records without consent except for a limited number of circumstances specified in the law. DPI must be able to access postsecondary records in order to compete for federal stimulus funds to develop a statewide database for education records that cover preschool through postsecondary education. Such a database would help DPI improve K-12 instruction. If postsecondary institutions had access to the database, they could use the information to improve their own programs.

34 CFR s. 99.31(a)(1) permits an agency or institution to disclose student records to contractors, but only if the contractor is performing work that the disclosing entity's own employees could perform, and only if the contractor's use of the records is under the direct control of the disclosing entity.

Currently, DPI only has authority over K-12, UW System only has authority over universities, and WCTS only has authority over technical colleges. Therefore, DPI employees would currently not study postsecondary institutions, and postsecondary institution employees would not study K-12. This is problematic because under current law, for example, UW could exchange records pursuant to a contract with DPI, but only for the purposes of studying UW programs. DPI would not be able to use the UW records to improve K-12.

34 CFR ss. 99.31(3) and 99.35 permit DPI, as a state educational authority, to access any education records, but only to audit or evaluate education programs over which DPI has authority.

34 CFR s. 99.31(6) permits educational institutions (such as universities or technical colleges) to disclose student records to organizations conducting research on their behalf. However, this subsection does not allow DPI to disclose records because DPI is not an educational institution.

34 CFR s. 99.33 prohibits using education records for any purpose other than the purpose for which the disclosure was made.

Nothing in FERPA requires DPI, UW, or WCTS to exchange education records with each other.

The intent of this statutory change is to give the DPI, UW, and WCTS the legal authority that is necessary to take advantage of all of the above exceptions under FERPA. This will permit and ensure the exchange of records that is necessary to complete the database contemplated by the America COMPETES Act. It will also give each entity joint authority over any research that is conducted under the new arrangement.

**Language:**

The contemplated statutory language would create a new section in ch. 115 which provides the following:

(1) In this section "P-16" means preschool through postsecondary education.

(2) (a) DPI, UWS, and WCTS shall enter into one or more agreements with each other under which the parties cooperatively evaluate and study P-16 education programs.

(b) The agreements entered into pursuant to this section shall result in the conduct of research with the goal of improving P-16 instruction in Wisconsin, including [list policy objectives].

(3) (a) The State Superintendent, Board of Regents, and WCTS Board shall share education records with one another to the extent necessary to conduct the research required by this section.

(b) DPI shall establish and maintain a longitudinal database capable of holding education records from preschool through postsecondary education and complying with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USC s. 1232g) and this section. The database shall include records exchanged pursuant to par. (a).

(4) Any agreement entered into pursuant to this section shall specify:

- > ■ That the governing bodies of the parties, or a person designated by each, will provide direct joint supervision of the work done pursuant to the agreement, including any exchange, use, and maintenance of education records.
- The means that will be used to control access to education records shared pursuant to this section.
- The purpose, scope, and duration of the study or studies and the education data that will be exchanged to conduct the study.
- > ■ That DPI, UWS, and WCTS shall use personally identifiable information from education records obtained from the other parties to the agreement only to meet the purpose or purposes of the study as stated in the written agreement.
- A time period after which DPI, UWS, and WCTS shall destroy or return all personally identifiable information from education records obtained from the

other parties to the agreement when the information is no longer needed for the purposes for which the study was conducted.

(5) Research under this section shall be conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of DPI, UWS, or WCTS that have legitimate interests in the information.

**Grant, Peter**

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**From:** Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]  
**Sent:** Tuesday, September 29, 2009 4:43 PM  
**To:** Grant, Peter  
**Subject:** RE: statewide student database- new draft  
**Attachments:** Drafting instructions - DPI auth - draft 9-29-09.doc

Peter,

As it turns out, there has been a change in the drafting instructions that will answer your questions. The new drafting instructions are attached here. I will be out of the office on Thursday and Friday of this week and all of next week. As a result, the point of contact on this draft is Betsy Dieterich (Elisabeth.Dieterich@wisconsin.gov) and you can contact her if you have any questions.

I apologize for the last minute changes.

Marta

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**From:** Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]  
**Sent:** Tuesday, September 29, 2009 2:57 PM  
**To:** Skwarczek, Marta A - DOA  
**Subject:** RE: statewide student database- new draft

Marta, how should I define "education records" in this draft? Should I incorporate by reference the definition used in the federal regulations for FERPA?

Also, does "P-16," defined in the draft as "preschool through postsecondary education," include graduate and professional school education; i.e., beyond college?

Peter

---

**From:** Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]  
**Sent:** Thursday, September 24, 2009 5:33 PM  
**To:** Grant, Peter  
**Subject:** statewide student database- new draft

Peter,

Please see the drafting instructions attached regarding a statewide student database. I am not sure which other drafters should be involved with this draft.

Thanks.

STATEWIDE STUDENT DATABASE  
DRAFTING INSTRUCTIONS FOR LRB  
9/29/09

Rec'd  
9/30/09

-DRAFT-

**Possible location:**

- Chapter 115.

**Policy goal:**

The Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USC s. 1232g) and its implementing regulations (34 CFR part 99) prohibit release of student records without consent except for a limited number of circumstances specified in the law. DPI must be able to access postsecondary records in order to compete for federal stimulus funds to develop a statewide database for education records that cover preschool through postsecondary education. Such a database would help improve instruction from the elementary through the postsecondary level.

One exception to FERPA's prohibition on release of education records is 34 CFR 99.31(3), which allows State educational authorities to access student records to audit or evaluate federal or state supported education programs. However, to take advantage of this exception, the State educational authority must have independent legal authority to evaluate the program of the entity providing the records.

Nothing in FERPA requires DPI, UW, or WCTS to exchange education records with each other.

The intent of this statutory change is to give the DPI the legal authority that is necessary to take advantage of the above exception under FERPA. The statutory change will permit and ensure the exchange of records that is necessary to complete the database contemplated by the America COMPETES Act. It will also include postsecondary entities in the process.

**Language:** the new statutory language would provide the following:

(1) In this section:

(a) "P-16" means preschool through postsecondary education, including graduate and professional level education.

(b) "Education record" has the meaning in 34 CFR s. 99.3.

(2) DPI shall establish and maintain a longitudinal database ~~capable of holding~~ education records from preschool through postsecondary education and complying with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USC s. 1232g).

disposal  
under this  
section

(3) DPI may audit or evaluate any federal and state supported education programs at K-12 public institutions. DPI may also audit or evaluate any federal and state supported education programs at the postsecondary level pursuant to plans approved under par. (5).

(4) DPI shall develop one or more plans to audit or evaluate federal-supported, state-supported, ~~and other education~~ programs at the preschool through postsecondary level. The plans shall make use of the database established under par. (2).

(5) DPI shall present the plans developed under par. (4) for approval by the Board of Regents of the University of Wisconsin System (UWS), Technical College System (WCTS) Board, and Wisconsin Association of Independent Colleges and Universities (WAICU).

K-12 priv. school?

(6) If approval under par. (5) is obtained:

(a) UW System, WCTS, and WAICU shall share education records with DPI upon certification from the State Superintendent or his designee that the records are necessary to implement plans approved under par. (5). [This will need to be referenced in ch. 36 and ch. 38, which establish the authority of the Board of Regents and Wisconsin Technical College System (WCTS) Board. *See. s. 36.03(1)(L).*]

(b) DPI shall implement the plans as approved.

(7) [This section should be modified or eliminated if FERPA changes so it is no longer necessary.]

## Grant, Peter

---

**From:** Grant, Peter  
**Sent:** Wednesday, September 30, 2009 10:10 AM  
**To:** Dieterich, Elisabeth - DOA  
**Subject:** Statewide student dtatbase

Hi Betsy. I just got new drafting instructions regarding the statewide student database, and Marta Skwarczek suggested I contact you with questions since she will be out of the office until October 11. Here are my initial questions:

- In sub. (3), what is meant by "federal and state supported education programs"? Does it include private institutions of higher education that receive *any* form of federal support? As for "K-12 public institutions," does that include anything other than school districts and perhaps charter schools? Does it include the independent charter schools? — *NO*
- In sub. (3), DPI is authorized to "audit or evaluate federal and state supported education programs." In sub. (4), DPI is required to "develop...plans to audit or evaluate federal-supported, state-supported, and *other* education programs." Is the difference in wording and the addition of "other education programs" intentional? In other words, do the two subsections described different education programs? I realize that would make no sense, since (3) authorizes the audit or evaluation, and (4) requires plans regarding the audit or evaluation, and DPI probably would not make plans regarding an audit that it was not authorized to conduct, but the two subsections *do* describe different programs....
- In sub. (5), DPI must present the plans to the UW, the WTCS, and the WAICU. This makes it look like the only private institutions that are covered in subs. (3) and (4) are the private institutions in the WAICU. Is that correct?
- Sub. (6) says that if approval is obtained from WAICU, WAICU shall share education records with DPI. What education records about individual students does the association maintain? Wouldn't it be the private colleges themselves that maintain student education records? If the records are maintained by the private colleges and not by the association, how can the association approve the disclosure on behalf of the private colleges?

I guess that's it for now. Thanks, Betsy.

Peter

Peter Grant, Managing Attorney  
Wisconsin Legislative Reference Bureau  
608-267-3362  
peter.grant@legis.wisconsin.gov

**Grant, Peter**

---

**From:** Dieterich, Elisabeth - DOA [Elisabeth.Dieterich@Wisconsin.gov]  
**Sent:** Thursday, October 15, 2009 2:37 PM  
**To:** Grant, Peter  
**Cc:** Skwarczek, Marta A - DOA  
**Subject:** Student data system legislation  
**Attachments:** Drafting instructions - joint auth - draft 10-15-09 v2.doc

Peter,

A couple weeks ago, you began work on drafting legislation to create a statewide longitudinal data system. You had a few questions. I told you we still had some work to do on the contents of the legislation and that I would get back to you with further instructions.

I am now attaching our latest draft of drafting instructions. They are significantly more robust than the last draft we gave you. We may get a bit of additional feedback from the players, but we thought it best to go ahead and let you get started.

Please let me know if you have questions.

Thanks!

*Betsy Dieterich  
Assistant Legal Counsel  
Wisconsin Department of Administration  
101 East Wilson Street  
Madison, WI 53702  
(608) 264-6397*

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STATEWIDE STUDENT DATABASE  
DRAFTING INSTRUCTIONS FOR LRB  
10/15/09

-DRAFT-

**POLICY GOAL**

In order to compete for federal stimulus funds to develop a statewide data system for education records that cover preschool through postsecondary education, DPI must be able to access postsecondary records and postsecondary institutions must be able to access K-12 records. The data system would help improve Wisconsin's education system as a whole, from preschool through the end of postsecondary education.

However, the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USC s. 1232g) and its implementing regulations (34 CFR part 99) prohibit release of student records without consent except for a limited number of circumstances specified in the law.

34 CFR s. 99.31(a)(1) permits an agency or institution to disclose student records to contractors, but only if the contractor is performing work that the disclosing entity's own employees could perform, and only if the contractor's use of the records is under the direct control of the disclosing entity. Currently, DPI only has authority over K-12, UW System only has authority over universities, WCTS only has authority over technical colleges, and WAICU only has authority over private colleges. DPI employees are not generally authorized to study postsecondary institutions, and postsecondary institution employees are not generally authorized to study K-12. In addition, 34 CFR s. 99.33 prohibits using education records for any purpose other than the purpose for which the disclosure was made. Therefore, for example, under current state law and U.S. Department of Education guidance, UW could exchange records with DPI pursuant to this contractor exception, but only so that DPI may help UW study its own programs; DPI would not be able to use the UW records to improve K-12.

34 CFR ss. 99.31(3) and 99.35 permit DPI, as a state educational authority, to access any education records, but only to audit or evaluate education programs over which DPI has authority. Under current state law, there is no entity with authority to conduct audits or evaluations spanning the entire P-20 education system. Therefore, this exception only allows DPI's use of K-12 records.

34 CFR s. 99.31(6) permits educational institutions (such as universities or technical colleges) to disclose student records to organizations conducting research on their behalf. However, Department of Education guidance indicates that this subsection does not allow DPI to disclose records because DPI is not an educational institution.

Finally, nothing in FERPA requires DPI, UW, WCTS, or WAICU to exchange education records with each other.

It is possible that guidance from the Department of Education will change the above interpretations and nullify the need for the changes to Wisconsin law contemplated here. In the meantime, the intent of this statutory change is to give the DPI, UW, WCTS, and WAICU the legal authority that is necessary to take advantage of all of the above exceptions under FERPA. This will permit and ensure the exchange of records that is necessary to complete the data system contemplated by the America COMPETES Act. It will also give each entity joint authority over any research that is conducted under the new arrangement.

### **STATUTORY LANGUAGE**

The new statutory language would provide the following:

#### **(1) Declaration of Policy.**

(a) Sound data collection, reporting and analysis are critical to building an education system capable of ensuring that all Wisconsin students are adequately prepared for college and the global workforce. Schools, school districts, and postsecondary institutions can improve instructional and educational decision-making using data that are collected and made available to them.

(b) State education policymaking benefits from partnerships between state education agencies and entities with expertise in education research. It is beneficial for Wisconsin to establish systems and processes that permit qualified researchers to assist with state evaluation and research functions in a manner that is consistent with privacy protection laws.

(c) Wisconsin is committed to establishing and maintaining a longitudinal student unit record data system that educators and policymakers can use to analyze and assess student progress beginning with early learning programs and continuing through postsecondary education and into employment. The Department of Public Instruction (DPI), University of Wisconsin System (UWS), Wisconsin Technical College System (WCTS), and Wisconsin Association of Independent Colleges and Universities (WAICU) have designed, built and deployed some of the fundamental components of a longitudinal data system and have engaged in extensive efforts to link and use available education data effectively. Now, it is necessary to integrate and manage the various education data components in a cooperative manner to establish a data-driven, decision-making environment for this state's education system.

(d) The longitudinal data system established through the state compact mandated by this section will support improvement in student learning outcomes.

(e) State use and management of education data shall be in accordance with all legal requirements protecting student privacy and shall protect personal information from intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.<sup>1</sup>

(f) The “America COMPETES Act of 2007” mandates that Wisconsin implement a statewide education data system covering preschool through higher education to perform the following functions:

(i) Identify factors that correlate to students’ ability to successfully engage in and complete postsecondary-level general education coursework without the need for prior developmental coursework.

(ii) Identify factors to increase the percentage of low-income and minority students who are academically prepared to enter and successfully complete postsecondary-level general education coursework.

(iii) Use the data in the system to otherwise inform education policy and practice in order to better align State academic content standards, and curricula, with the demands of postsecondary education, the 21st century workforce, and the Armed Forces.<sup>2</sup>

**(2) Definitions.** In this section:

✓ (a) “P-20” means education from the preschool through postsecondary levels.

✓ (b) “K-12” means the level of education taught at public schools, as defined in s. 115.01(1).<sup>3</sup>

? (c) “Postsecondary” means education at colleges and universities occurring after completion of secondary education, including undergraduate, graduate, and professional education.

/ (d) “Education record” has the meaning in 34 CFR s. 99.3.

✗ (e) “Longitudinal data system” means a student unit record data system that links student records beginning with early learning programs and continuing through postsecondary education. The system may consist of separate record systems integrated through agreement and data transfer mechanisms.<sup>4</sup> It may also be capable of incorporating non-educational data such as workforce data.

<sup>1</sup> The language in the preceding bullets is borrowed from the comparable IL and WV statutes.

<sup>2</sup> This language is from the draft Executive Order that was originally contemplated.

<sup>3</sup> Section 115.01(1) defines public schools are the elementary and high schools supported by public taxation. These are the schools DPI currently regulates.

<sup>4</sup> From IL and WV statutes.

20 WCC 9801  
15 WCC 205

**(3) Joint Authority.** DPI, UWS, WCTS, and WAICU may jointly or on their own evaluate, study, and research education programs at any level of P-20 instruction, except that:

(a) Any evaluation, study, or research by DPI of UWS, WTCS, or WAICU programs or records shall be pursuant to a compact entered into pursuant to par.

(4).

(b) Any evaluation, study, or research by UWS of DPI, WTCS, or WAICU programs or records shall be pursuant to a compact entered into pursuant to par.

(4).

(c) Any evaluation, study, or research by WTCS of DPI, UWS, or WAICU programs or records shall be pursuant to a compact entered into pursuant to par.

(4).

(d) Any evaluation, study, or research by WAICU of DPI, UWS, or WTCS programs or records shall be pursuant to a compact entered into pursuant to par.

(4).

**(4) Compact.** By 90 days after enactment of this bill, DPI, UWS, WTCS, and WAICU shall enter into a compact. The compact shall:

7 (a) Be approved and signed by the State Superintendent, the Board of Regents, the WCTS Board, and the WAICU President.

(b) Require the establishment and maintenance of a longitudinal data system, and establish the process by which it will occur.

(c) Establish a process by which the parties, jointly or on their own, evaluate, study, and research education programs at public schools, UWS, WCTS, or WAICU institutions for the benefit of P-20 education in Wisconsin.

(d) If a party's programs are being evaluated, studied, or researched under the compact,

(i) Require that that party's governing body or its designee shall grant prior approval before any work is performed.

(ii) Specify the level of supervision and involvement that that party will have in the work that will be performed.

(e) Require each party to be responsible for collecting and maintaining records of the students under its jurisdiction.

(f) Require each party to submit data to the longitudinal data system and the other parties to the extent necessary to perform the research authorized by this section,

and establish the process by which the parties will determine which data is necessary to perform the research authorized by this section.

✓ (g) Establish a system for entering into data sharing agreements with each other and with outside research organizations consistent with par. (5)(b).

✓ (h) Establish a process by which one or more of the parties may collaborate with other state agencies, departments, offices, boards, or commissions or any other entity to import workforce or other data into the longitudinal data system, to the extent authorized by applicable privacy laws, to assist with research authorized by this section.

**(5) Data Sharing.**

(a) The parties may submit data to the longitudinal data system, each other, or outside research organizations to support the research authorized by this section.

(b) Data that is shared between the parties or with outside research organizations pursuant to the compact shall be in connection with one or more data sharing agreements meeting the following requirements:

(i) Permitted by and undertaken in accordance with privacy protection laws.

(ii) Receives prior approval from the governing body of any party whose data is being shared, or its designee.

✓ (iii) Specifies the purpose, scope and duration of the data sharing arrangement.

✓ (iv) Describes specific data access, use and security restrictions that the recipient will undertake.

✓ (v) Ensures the destruction or return of the data when no longer needed for the authorized purposes under the data sharing arrangement.

✓ (vi) If the data sharing agreement is with an outside research organization:

1. Requires the recipient of the data to use personally identifiable information from education records only to meet the purpose or purposes of the data sharing arrangement stated in the written agreement.

✓ 2. Prohibits the personal identification of any person by individuals other than authorized representatives of the party who have legitimate interests in the information. = recipient ?

(vii) Contains such other terms and provisions as the parties consider necessary or appropriate.<sup>5</sup>

**(7) No Impact on Existing Authority.** Neither this section nor the compact or agreements entered into pursuant to this section diminishes any responsibilities or authority that the State Superintendent, Board of Regents, WCTS Board, or WAICU may have under law.

**(8) Reconsideration upon changes to FERPA.** The appropriate legislative committee shall consider a change to this section if it is brought to the committee's attention that FERPA, its implementing regulations, or Department of Education guidance have been changed to make this section unnecessary for sharing of data between DPI, UWS, and WCTS for the purposes of evaluation, study, and research to improve P-20 education.

#### **POSSIBLE LOCATION**

- Chapter 115.
- References to the new section would have to be included in chapters 36 and 38, which establish the authority of the Board of Regents and Wisconsin Technical College System (WCTS) Board.

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<sup>5</sup> Much of the language in par. b borrowed from IL and WV statutes and FERPA regulations.

**Grant, Peter**

**From:** Dieterich, Elisabeth - DOA [Elisabeth.Dieterich@Wisconsin.gov]  
**Sent:** Monday, October 19, 2009 4:46 PM  
**To:** Grant, Peter  
**Subject:** RE: Revisions to student data system instructions

264-6397

Peter,

I'm a little confused about your email below – when you have a chance, can you please give me a call to clarify?

Also, please replace par. (4)(f) with the following:

(f) Include a provision that requires the parties to exchange student data that is necessary to perform work under the compact, to the extent permitted by applicable privacy laws.

Thanks,  
Betsy

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**From:** Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]  
**Sent:** Monday, October 19, 2009 4:01 PM  
**To:** Dieterich, Elisabeth - DOA  
**Subject:** RE: Revisions to student data system instructions

Hi Betsy -

Thanks for the two versions.

I should have mentioned last week that the LRB generally does not include statements of legislative intent, purpose, or findings. If you need information regarding the reasons for the policy, I can send you the relevant portions of our drafting manual.

Peter

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**From:** Dieterich, Elisabeth - DOA [mailto:Elisabeth.Dieterich@Wisconsin.gov]  
**Sent:** Monday, October 19, 2009 3:49 PM  
**To:** Grant, Peter  
**Cc:** Skwarczek, Marta A - DOA  
**Subject:** Revisions to student data system instructions

Peter,

As we discussed, I am attaching our revised drafting instructions – I'm attaching a version using track changes and a clean version (in case it's easier to read). I attempted to address the preliminary comments you gave me when we spoke last week.

Please give me a call if you have any questions.

Thanks.

*Betsy Dieterich  
Assistant Legal Counsel  
Wisconsin Department of Administration  
101 East Wilson Street  
Madison, WI 53702  
(608) 264-6397*

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10/20/2009

rec'd 10/19/09

STATEWIDE STUDENT DATA SYSTEM  
DRAFTING INSTRUCTIONS FOR LRB

10/19/09

-DRAFT-

**POLICY GOAL**

Wisconsin has long been an advocate of using an evidence-based approach to improving the education offered in its state. The development of a longitudinal statewide data system for student information will enable Wisconsin educational agencies and institutions to evaluate education in Wisconsin, with the goal of better preparing Wisconsin students for postsecondary education and competing in the global economy. It will also allow Wisconsin to meet federal mandates and compete for available federal funding. Key to the development of a statewide longitudinal student data system is the ability of the Department of Public Instruction (DPI), University of Wisconsin System (UWS), Wisconsin Technical College System (WTCS), and Wisconsin Association of Independent Colleges and Universities (WAICU) to exchange personally-identifiable student information.

The federal Family and Educational Rights and Privacy Act (FERPA) (20 USC s. 1232g) and its implementing regulations (34 CFR part 99) prohibit institutions and educational agencies from sharing personally-identifiable information from student records without a student or parent's consent, except under certain specified circumstances. For example, 34 CFR s. 99.31(a)(1) permits an agency or institution to disclose student records to contractors if the disclosing entity would otherwise use employees for the work and has direct control over the contractor's use of the records, 34 CFR ss. 99.31(a)(3) and 99.35 permit state educational authorities to access education records in connection with authorized audits or evaluations, 34 CFR s. 99.31(a)(6) permits educational agencies and institutions to disclose student records pursuant to written agreement with organizations conducting research on their behalf.

Current state law does not provide a clear framework for DPI, UWS, WTCS, and WAICU to exchange personally-identifiable student information under the above FERPA provisions. This legislation is aimed at providing DPI, UWS, WTCS, and WAICU with the legal authority that will allow them to take advantage of the above FERPA provisions to share student information and create a statewide longitudinal data system. In so doing, the legislation also establishes a joint compact between these agencies to further a shared research agenda.

**STATUTORY LANGUAGE**

The new statutory language would provide the following:

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**Deleted:** In order to compete for federal stimulus funds to develop a statewide data system for education records that cover preschool through postsecondary education, DPI must be able to access postsecondary records and postsecondary institutions must be able to access K-12 records. The data system would help improve Wisconsin's education system as a whole, from preschool through the end of postsecondary education. ¶

¶ However, the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USC s. 1232g) and its implementing regulations (34 CFR part 99) prohibit release of student records without consent except for a limited number of circumstances specified in the law. ¶

**Deleted:** , but only

**Deleted:** contractor is performing work that the disclosing entity's own employees could perform, and only if the

**Deleted:** is under the direct control of the disclosing entity. Currently, DPI only has authority over K-12, UW System only has authority over universities, WTCS only has authority over technical colleges, and WAICU only has authority over private colleges. DPI employees are not generally authorized to study postsecondary institutions, and postsecondary institution employees are not generally authorized to study K-12. In addition, 34 CFR s. 99.33 prohibits using education records for any purpose other than the purpose for which the disclosure was made. Therefore, for example, under current state law and U.S. Department of Education guidance, UW could exchange records with DPI pursuant to this contractor exceptio... [1]

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**Deleted:** However, Department of Education guidance indicates that this subsection does not allow DPI to d... [3]

**(1) Declaration of Policy.**

(a) Sound data collection, reporting and analysis are critical to building an education system capable of ensuring that all Wisconsin students are adequately prepared for college and the global workforce. Schools, school districts, and postsecondary institutions can improve instructional and educational decision-making using data that are collected and made available to them.

(b) State education policymaking benefits from partnerships between state education agencies and entities with expertise in education research. It is beneficial for Wisconsin to establish systems and processes that permit qualified researchers to assist with state evaluation and research functions in a manner that is consistent with privacy protection laws.

(c) Wisconsin is committed to establishing and maintaining a longitudinal student unit record data system that educators and policymakers can use to analyze and assess student progress beginning with early learning programs and continuing through postsecondary education and into employment. The Department of Public Instruction (DPI), University of Wisconsin System (UWS), Wisconsin Technical College System (WTCs), and Wisconsin Association of Independent Colleges and Universities (WAICU) have designed, built and deployed some of the fundamental components of a longitudinal data system and have engaged in extensive efforts to link and use available education data effectively. Now, it is necessary to integrate and manage the various education data components in a cooperative manner to establish a data-driven, decision-making environment for this state's education system.

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(d) The longitudinal data system established through the state compact mandated by this section will support improvement in student learning outcomes.

(e) State use and management of education data shall be in accordance with all legal requirements protecting student privacy and shall protect personal information from intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.<sup>1</sup>

(f) The “America COMPETES Act of 2007” mandates that Wisconsin implement a statewide education data system covering preschool through higher education to perform the following functions:

(i) Identify factors that correlate to students’ ability to successfully engage in and complete postsecondary-level general education coursework without the need for prior developmental coursework.

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<sup>1</sup> The language in the preceding bullets is borrowed from the comparable IL and WV statutes.

(ii) Identify factors to increase the percentage of low-income and minority students who are academically prepared to enter and successfully complete postsecondary-level general education coursework.

(iii) Use the data in the system to otherwise inform education policy and practice in order to better align State academic content standards, and curricula, with the demands of postsecondary education, the 21st century workforce, and the Armed Forces.

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**(2) Definitions.** In this section:

(a) "Postsecondary" means education at colleges, universities, and other institutions of higher education occurring after completion of secondary education, including undergraduate, graduate, and professional education.

Deleted: (a) "P-20" means education from the preschool through postsecondary levels. ¶  
¶ (b) "K-12" means the level of education taught at public schools, as defined in s. 115.01(1). ¶

(b) "Student data" means information from education records, as defined in 34 CFR s. 99.3, or pupil records, as defined in s. 118.125, Wis. Stats.

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(c) "Longitudinal data system" means a student unit record data system that links student data beginning with early learning programs and continuing through postsecondary education. The system may consist of separate record systems integrated through agreement and data transfer mechanisms.<sup>4</sup> It may also be capable of incorporating non-educational data such as workforce data.

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Deleted: "Education record" has the meaning in 34 CFR s. 99.3.

(d) "Party" means DPI, UWS, WTCS, or WAICU.

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(e) "Personally identifiable" has the meaning of personally identifiable information as defined in 34 CFR s. 99.1.

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**(3) Evaluation, Study, and Research.** For the purposes expressed in par. (1), DPI, UWS, WTCS, and WAICU may jointly or on their own evaluate, study, and research education programs at the preschool through postsecondary levels of instruction, except that if any party conducts evaluation, study, or research under this section that involves any other party's programs, institutions, or records, the evaluation, study, or research shall be pursuant to a compact entered into under par. (4).

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**(4) Compact.** By 90 days after enactment of this bill, DPI, UWS, WTCS, and WAICU shall enter into a compact, which shall:

Deleted: (b) Any evaluation, study, or research by UWS of DPI, WTCS, or WAICU programs or records shall be pursuant to a compact entered into pursuant to par. (4). ¶

¶ (c) Any evaluation, study, or research by WTCS of DPI, UWS, or WAICU programs or records shall be pursuant to a compact entered into pursuant to par. (4). ¶

¶ (d) Any evaluation, study, or research by WAICU of DPI, UWS, or WTCS programs or records shall be pursuant to a compact entered into pursuant to par. (4). ¶

(a) Be approved and signed by the State Superintendent, the Board of Regents or its designee, the WTCS Board or its designee, and the WAICU President.

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<sup>4</sup> From IL and WV statutes.

✓ (b) Provide for the establishment and maintenance of a longitudinal data system, including the process by which it will occur.

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✓ (c) Establish a process by which the parties, jointly or on their own, evaluate, study, and research education programs at public schools, UWS, WTCS, or WAICU institutions for the benefit of education in Wisconsin from the preschool through postsecondary levels of instruction.

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✓ (d) Include a provision that, if a party's programs are being evaluated, studied, or researched under the compact by any other party,

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✓ (i) Prohibits the commencement of work without prior approval from the party whose programs are being evaluated, studied, or researched, and,

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✓ (ii) Specifies the level of supervision and involvement each party will have in the work that will be performed.

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✓ (e) Specify that DPI shall have primary responsibility for collection and maintenance of student data from public schools, UWS shall have primary responsibility for collection and maintenance of student data from UWS institutions, WTCS shall have primary responsibility for collection and maintenance of data from WTCS institutions, and WAICU shall have primary responsibility for collection and maintenance of data from WAICU institutions.

Deleted: Require each party to be responsible for collecting and maintaining records of the students under its jurisdiction.

✓ (f) Include a provision that:

(i) Requires the parties to exchange student data that is necessary to perform work under the compact, to the extent permitted by applicable privacy laws, and

(ii) Establishes a dispute resolution process to use in the case of disagreement over necessity of student data or applicability of privacy laws.

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✓ (g) Establish a system for entering into data sharing agreements with each other and with outside research organizations consistent with par. (5).

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✓ (h) Commit the parties to protecting student privacy and complying with laws pertaining to privacy of student data.

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✓ (i) Establish a process by which one or more of the parties may collaborate with other state agencies, departments, offices, boards, or commissions or any other entity to import workforce or other data into the longitudinal data system, to the extent authorized by applicable privacy laws, to assist with research authorized by this section.

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See new privacy on 10/19 email

**(5) Data Sharing.**

✓ (a) The parties may submit student data to the longitudinal data system, each other, or outside research organizations to support the research authorized by this section.

✓ (b) Personally identifiable student data that is shared between the parties pursuant to the compact shall be in connection with one or more data sharing agreements meeting the following requirements:

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X (i) Permitted by and undertaken in accordance with privacy protection laws.

+ (ii) Is approved and signed by the governing body of any party entering into the data sharing agreement, or the governing body's designee.

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**Deleted:** whose  
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✓ (iii) Specifies the purpose, scope and duration of the data sharing arrangement.

✓ (iv) Describes specific data access, use and security restrictions that the recipient will undertake.

✓ (v) Ensures the destruction or return of the personally identifiable student data when no longer needed for the authorized purposes under the data sharing arrangement.

+ (vi) Contains such other terms and provisions as the parties consider necessary or appropriate.<sup>5</sup>

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(vi) If the data sharing agreement is  
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✓ (c) Personally identifiable student data that is shared with an outside research organization pursuant to the compact shall be in connection with one or more data sharing agreements which meet the requirements of par. (b). In addition, the data sharing agreement shall:

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✓ (i) Require the recipient to use personally identifiable student data only to meet the purpose or purposes stated in the data sharing agreement.

✓ (ii) Prohibit the personal identification of any person by individuals other than authorized representatives of the research organization who have legitimate interests in the information.

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(vii) Contains such other terms and provisions as the parties consider necessary or appropriate. ¶

✓ (7) **No Infringement upon Existing Authority.** Neither this section, nor the compact under par. (4), nor any data sharing agreement under par. (5), infringes upon or diminishes existing responsibility or authority that the parties may have under law. Any additional responsibility or authority granted to the parties under this section is solely for

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<sup>5</sup> Much of the language in par. b borrowed from IL and WV statutes and FERPA regulations.

the purposes expressed in par. (1). If any party fails to enter into the compact under par. (4), the responsibilities and authorities conferred upon the remaining parties by this section shall not be affected.

**POSSIBLE LOCATION**

- Chapter 115.
  - References to the new section would have to be included in chapters 36 and 38, which establish the authority of the Board of Regents and ~~WTCS~~ Board.

**Deleted: (8) Reconsideration upon changes to FERPA.** The appropriate legislative committee shall consider a change to this section if it is brought to the committee's attention that FERPA, its implementing regulations, or Department of Education guidance have been changed to make this section unnecessary for sharing of data between DPI, UWS, and WCTS for the purposes of evaluation, study, and research to improve P-20 education.¶

**Deleted:** Wisconsin Technical College System (

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is under the direct control of the disclosing entity. Currently, DPI only has authority over K-12, UW System only has authority over universities, WCTS only has authority over technical colleges, and WAICU only has authority over private colleges. DPI employees are not generally authorized to study postsecondary institutions, and postsecondary institution employees are not generally authorized to study K-12. In addition, 34 CFR s. 99.33 prohibits using education records for any purpose other than the purpose for which the disclosure was made. Therefore, for example, under current state law and U.S. Department of Education guidance, UW could exchange records with DPI pursuant to this contractor exception, but only so that DPI may help UW study its own programs; DPI would not be able to use the UW records to improve K-12

s over which DPI has authority. Under current state law, there is no entity with authority to conduct audits or evaluations spanning the entire P-20 education system. Therefore, this exception only allows DPI's use of K-12 records.

However, Department of Education guidance indicates that this subsection does not allow DPI to disclose records because DPI is not an educational institution.

Finally, nothing in FERPA requires DPI, UW, WCTS, or WAICU to exchange education records with each other.

It is possible that guidance from the Department of Education will change the above interpretations and nullify the need for the changes to Wisconsin law contemplated here. In the meantime, the intent of this statutory change is to give the DPI, UW, WCTS, and WAICU the legal authority that is necessary to take advantage of all of the above exceptions under FERPA. This will permit and ensure the exchange of records that is necessary to complete the data system contemplated by the America COMPETES Act. It will also give each entity joint authority over any research that is conducted under the new arrangement.

rec'd 10/19/09

STATEWIDE STUDENT DATA SYSTEM  
DRAFTING INSTRUCTIONS FOR LRB  
10/19/09

-DRAFT-

**POLICY GOAL**

Wisconsin has long been an advocate of using an evidence-based approach to improving the education offered in its state. The development of a longitudinal statewide data system for student information will enable Wisconsin educational agencies and institutions to evaluate education in Wisconsin, with the goal of better preparing Wisconsin students for postsecondary education and competing in the global economy. It will also allow Wisconsin to meet federal mandates and compete for available federal funding. Key to the development of a statewide longitudinal student data system is the ability of the Department of Public Instruction (DPI), University of Wisconsin System (UWS), Wisconsin Technical College System (WTCS), and Wisconsin Association of Independent Colleges and Universities (WAICU) to exchange personally-identifiable student information.

The federal Family and Educational Rights and Privacy Act (FERPA) (20 USC s. 1232g) and its implementing regulations (34 CFR part 99) prohibit institutions and educational agencies from sharing personally-identifiable information from student records without a student or parent's consent, except under certain specified circumstances. For example, 34 CFR s. 99.31(a)(1) permits an agency or institution to disclose student records to contractors if the disclosing entity would otherwise use employees for the work and has direct control over the contractor's use of the records. 34 CFR ss. 99.31(a)(3) and 99.35 permit state educational authorities to access education records in connection with authorized audits or evaluations. 34 CFR s. 99.31(a)(6) permits educational agencies and institutions to disclose student records pursuant to written agreement with organizations conducting research on their behalf.

Current state law does not provide a clear framework for DPI, UWS, WTCS, and WAICU to exchange personally-identifiable student information under the above FERPA provisions. This legislation is aimed at providing DPI, UWS, WTCS, and WAICU with the legal authority that will allow them to take advantage of the above FERPA provisions to share student information and create a statewide longitudinal data system. In so doing, the legislation also establishes a joint compact between these agencies to further a shared research agenda.

**STATUTORY LANGUAGE**

The new statutory language would provide the following:

**(1) Declaration of Policy.**

(a) Sound data collection, reporting and analysis are critical to building an education system capable of ensuring that all Wisconsin students are adequately prepared for college and the global workforce. Schools, school districts, and postsecondary institutions can improve instructional and educational decision-making using data that are collected and made available to them.

(b) State education policymaking benefits from partnerships between state education agencies and entities with expertise in education research. It is beneficial for Wisconsin to establish systems and processes that permit qualified researchers to assist with state evaluation and research functions in a manner that is consistent with privacy protection laws.

(c) Wisconsin is committed to establishing and maintaining a longitudinal student unit record data system that educators and policymakers can use to analyze and assess student progress beginning with early learning programs and continuing through postsecondary education and into employment. The Department of Public Instruction (DPI), University of Wisconsin System (UWS), Wisconsin Technical College System (WTCS), and Wisconsin Association of Independent Colleges and Universities (WAICU) have designed, built and deployed some of the fundamental components of a longitudinal data system and have engaged in extensive efforts to link and use available education data effectively. Now, it is necessary to integrate and manage the various education data components in a cooperative manner to establish a data-driven, decision-making environment for this state's education system.

(d) The longitudinal data system established through the state compact mandated by this section will support improvement in student learning outcomes.

(e) State use and management of education data shall be in accordance with all legal requirements protecting student privacy and shall protect personal information from intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.<sup>1</sup>

(f) The "America COMPETES Act of 2007" mandates that Wisconsin implement a statewide education data system covering preschool through higher education to perform the following functions:

(i) Identify factors that correlate to students' ability to successfully engage in and complete postsecondary-level general education coursework without the need for prior developmental coursework.

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<sup>1</sup> The language in the preceding bullets is borrowed from the comparable IL and WV statutes.

(ii) Identify factors to increase the percentage of low-income and minority students who are academically prepared to enter and successfully complete postsecondary-level general education coursework.

(iii) Use the data in the system to otherwise inform education policy and practice in order to better align State academic content standards, and curricula, with the demands of postsecondary education, the 21st century workforce, and the Armed Forces.

**(2) Definitions.** In this section:

(a) “Postsecondary” means education at colleges, universities, and other institutions of higher education occurring after completion of secondary education, including undergraduate, graduate, and professional education.

(b) “Student data” means information from education records, as defined in 34 CFR s. 99.3, or pupil records, as defined in s. 118.125, Wis. Stats.

(c) “Longitudinal data system” means a student unit record data system that links student data beginning with early learning programs and continuing through postsecondary education. The system may consist of separate record systems integrated through agreement and data transfer mechanisms.<sup>2</sup> It may also be capable of incorporating non-educational data such as workforce data.

(d) “Party” means DPI, UWS, WTCS, or WAICU.

(e) “Personally identifiable” has the meaning of personally identifiable information as defined in 34 CFR s. 99.1.

**(3) Evaluation, Study, and Research.** For the purposes expressed in par. (1), DPI, UWS, WTCS, and WAICU may jointly or on their own evaluate, study, and research education programs at the preschool through postsecondary levels of instruction, except that if any party conducts evaluation, study, or research under this section that involves any other party’s programs, institutions, or records, the evaluation, study, or research shall be pursuant to a compact entered into under par. (4).

**(4) Compact.** By 90 days after enactment of this bill, DPI, UWS, WTCS, and WAICU shall enter into a compact, which shall:

(a) Be approved and signed by the State Superintendent, the Board of Regents or its designee, the WTCS Board or its designee, and the WAICU President.

(b) Provide for the establishment and maintenance of a longitudinal data system, including the process by which it will occur.

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<sup>2</sup> From IL and WV statutes.

(c) Establish a process by which the parties, jointly or on their own, evaluate, study, and research education programs at public schools, UWS, WTCS, or WAICU institutions for the benefit of education in Wisconsin from the preschool through postsecondary levels of instruction.

(d) Include a provision that, if a party's programs are being evaluated, studied, or researched under the compact by any other party,

(i) Prohibits the commencement of work without prior approval from the party whose programs are being evaluated, studied, or researched, and,

(ii) Specifies the level of supervision and involvement each party will have in the work that will be performed.

(e) Specify that DPI shall have primary responsibility for collection and maintenance of student data from public schools, UWS shall have primary responsibility for collection and maintenance of student data from UWS institutions, WTCS shall have primary responsibility for collection and maintenance of data from WTCS institutions, and WAICU shall have primary responsibility for collection and maintenance of data from WAICU institutions.

(f) Include a provision that:

(i) Requires the parties to exchange student data that is necessary to perform work under the compact, to the extent permitted by applicable privacy laws, and

(ii) Establishes a dispute resolution process to use in the case of disagreement over necessity of student data or applicability of privacy laws.

(g) Establish a system for entering into data sharing agreements with each other and with outside research organizations consistent with par. (5).

(h) Commit the parties to protecting student privacy and complying with laws pertaining to privacy of student data.

(i) Establish a process by which one or more of the parties may collaborate with other state agencies, departments, offices, boards, or commissions or any other entity to import workforce or other data into the longitudinal data system, to the extent authorized by applicable privacy laws, to assist with research authorized by this section.

## **(5) Data Sharing.**

(a) The parties may submit student data to the longitudinal data system, each other, or outside research organizations to support the research authorized by this section.

(b) Personally identifiable student data that is shared between the parties pursuant to the compact shall be in connection with one or more data sharing agreements meeting the following requirements:

(i) Permitted by and undertaken in accordance with privacy protection laws.

(ii) Is approved and signed by the governing body of any party entering into the data sharing agreement, or the governing body's designee.

(iii) Specifies the purpose, scope and duration of the data sharing arrangement.

(iv) Describes specific data access, use and security restrictions that the recipient will undertake.

(v) Ensures the destruction or return of the personally identifiable student data when no longer needed for the authorized purposes under the data sharing arrangement.

(vi) Contains such other terms and provisions as the parties consider necessary or appropriate.<sup>3</sup>

(c) Personally identifiable student data that is shared with an outside research organization pursuant to the compact shall be in connection with one or more data sharing agreements which meet the requirements of par. (b). In addition, the data sharing agreement shall:

(i) Require the recipient to use personally identifiable student data only to meet the purpose or purposes stated in the data sharing agreement.

(ii) Prohibit the personal identification of any person by individuals other than authorized representatives of the research organization who have legitimate interests in the information.

**(7) No Infringement upon Existing Authority.** Neither this section, nor the compact under par. (4), nor any data sharing agreement under par. (5), infringes upon or diminishes existing responsibility or authority that the parties may have under law. Any additional responsibility or authority granted to the parties under this section is solely for the purposes expressed in par. (1). If any party fails to enter into the compact under par.

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<sup>3</sup> Much of the language in par. b borrowed from IL and WV statutes and FERPA regulations.

(4), the responsibilities and authorities conferred upon the remaining parties by this section shall not be affected.

#### **POSSIBLE LOCATION**

- Chapter 115.
  - References to the new section would have to be included in chapters 36 and 38, which establish the authority of the Board of Regents and WTCS Board.