



State of Wisconsin  
2013 - 2014 LEGISLATURE

In 2-3  
out Today (by 7, if possible)

By 1:00

stmys



LRBs0249/P1  
PG:cjs:rs

FFK

1 MF

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY SUBSTITUTE AMENDMENT ,**  
**TO ASSEMBLY BILL 618**

82

Gen Cat

1 **AN ACT to renumber and amend** 118.125 (2) (d); **to amend** 118.125 (2) (a); and  
2 **to create** 115.297 (7), 115.298, 118.125 (2) (d) 1. and 118.125 (8) of the statutes;  
3 **relating to:** pupil data, the disclosure of pupil records, granting rule-making  
4 authority, and providing an exemption from rule-making procedures.

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

5 **SECTION 1.** 115.297 (7) of the statutes is created to read:  
6 115.297 (7) ENFORCEMENT. The attorney general or any district attorney may  
7 bring an action in circuit court for the enforcement of this section, including an action  
8 to restrain by temporary or permanent injunction any violation of this section.

9 **SECTION 2.** 115.298 of the statutes is created to read:  
10 **115.298 Pupil data.** (1) In this section, "student information system" means  
11 the student information system under s. 115.28 (12).

Ins  
1-5

1           (2) The department shall post on its Internet site a comprehensive list of every  
2 distinct type of individual pupil data that the department collects or may collect,  
3 including all of the following:

4           (a) Individual pupil data required by state or federal law to be reported to the  
5 department.

6           (b) Individual pupil data included in the student information system.

7           (c) Individual pupil data that has been proposed to be included in the student  
8 information system, including a statement regarding the reason for the proposed  
9 inclusion.

10          (3) Annually by January 15, the department shall notify the governor, and the  
11 appropriate standing committees of the legislature under s. 13.172 (3), of any  
12 individual data that is proposed to be included in the student information system  
13 since the last report under this subsection.

14          (4) The department shall promulgate a rule listing every distinct type of  
15 individual pupil data that the department collects and revise the rule periodically  
16 to keep it up to date. Revisions to the rule that are necessary in order to comply with  
17 federal law shall be promulgated<sup>g.d</sup> as emergency rules under s. 227.24 for the period  
18 before the effective date of the permanent rules, but not to exceed the period  
19 authorized under s. 227.24 (1) (c), subject to extension under s. 227.24 (2).  
20 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to  
21 provide evidence that promulgating the rule as an emergency rule is necessary for  
22 the preservation of the public peace, health, safety, or welfare and is not required to  
23 provide a finding of emergency for the rule.

24          (5) The department shall develop a detailed data security plan that includes  
25 all of the following:

1 (a) Guidelines for authorizing access to the student information system and to  
2 individual pupil data, including guidelines for authenticating authorized access.

3 (b) Privacy compliance standards.

4 (c) Privacy and security audits.

5 (d) Breach planning, notification, and procedures.

6 (e) Data retention and disposition policies.

7 (f) Data security policies, including electronic, physical, and administrative  
8 safeguards, such as data encryption and employee training.

9 (6) The department shall ensure that any contract with a private vendor that  
10 governs databases, assessments, or instructional supports and that includes pupil  
11 data or pupil data that has been redacted to remove pupil and parent identifying  
12 information, includes provisions to safeguard the privacy and security of the data  
13 and includes penalties for noncompliance with the provisions.

14 **SECTION 3.** 118.125 (2) (a) of the statutes is amended to read:

15 118.125 (2) (a) A pupil, or the parent or guardian of a minor pupil, shall, upon  
16 request, be shown and provided with a copy of the pupil's ~~progress~~ pupil records other  
17 than the pupil's behavioral records.

18 **SECTION 4.** 118.125 (2) (d) of the statutes is renumbered 118.125 (2) (d) 2. and  
19 amended to read:

20 118.125 (2) (d) 2. Pupil records shall be made available to persons employed by  
21 the school district which the pupil attends who are required by the department under  
22 s. 115.28 (7) to hold a license, law enforcement officers who are individually  
23 designated by the school board and assigned to the school district, and other school  
24 district officials who have been determined by the school board to have legitimate  
25 educational interests, including safety interests, in the pupil records. Law

1 enforcement officers' records obtained under s. 938.396 (1) (c) 3. shall be made  
 2 available as provided in s. 118.127. A school board member or an employee of a school  
 3 district may not be held personally liable for any damages caused by the  
 4 nondisclosure of any information specified in this paragraph subdivision unless the  
 5 member or employee acted with actual malice in failing to disclose the information.  
 6 A school district may not be held liable for any damages caused by the nondisclosure  
 7 of any information specified in this paragraph subdivision unless the school district  
 8 or its agent acted with gross negligence or with reckless, wanton, or intentional  
 9 misconduct in failing to disclose the information.

10 **SECTION 5.** 118.125 (2) (d) 1. of the statutes is created to read:

11 118.125 (2) (d) 1. In this paragraph, "school district official" includes a  
 12 contractor, consultant, volunteer, or any other person to whom the school board has  
 13 outsourced school services or functions if the contractor, consultant, volunteer, or  
 14 other person satisfies the following conditions:

15 a. He or she performs a service or function for which the school board would  
 16 otherwise use school district employees.

17 b. He or she is under the direct control of the school board with respect to the  
 18 use and maintenance of pupil records.

19 c. He or she is subject to the requirements <sup>under</sup> of this section and <sup>under</sup> federal law  
 20 governing the use and redisclosure of personally identifiable information from pupil  
 21 records.

INS  
4-21

22 **SECTION 6.** 118.125 (8) of the statutes is created to read:

23 118.125 (8) POLITICAL AFFILIATION AND RELIGION. A school board may not request  
 24 a pupil, or a pupil's parent or guardian, to disclose the pupil's political affiliation or  
 25 religion.

None of the following

INS  
4-25



INS 1-5

X

1 SECTION 1. 115.28 (61) of the statutes is created to read:

2 115.28 (61) AGGREGATE PUPIL DATA. (a) Unless otherwise provided by state law,  
3 provide only aggregate pupil data to federal agencies, except <sup>that</sup> the state  
4 superintendent may provide individual pupil data in any of the following  
5 circumstances:

pertaining to an individual pupil

- 6 1. <sup>e The</sup> A pupil registers for or takes a national or multistate assessment.  
7 2. <sup>e The</sup> A pupil voluntarily participates in a program for which transferring  
8 individual data is a condition <sup>e or</sup> requirement of participation.  
9 3. <sup>e The</sup> A pupil is classified as migrant for federal reporting purposes.  
10 4. A federal agency is performing a compliance review.

11 (b) For purposes of par. (a), "aggregate data" means data collected or reported  
12 at the group, cohort, or institutional level.

END INS 1-5

INS 4-21

X

13 SECTION 2. 118.125 (2r) of the statutes is created to read:

14 118.125 (2r) REDISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION.  
15 Notwithstanding sub. (2) (a) <sup>✓</sup> to (p), a school board may not disclose personally  
16 identifiable information, as defined in 34 CFR <sup>✓</sup> 99.3, from pupil records unless all of  
17 the following apply:

- 18 (a) The person to whom the disclosure is being made agrees not to disclose the  
19 information to any other person without first obtaining the consent of the pupil, or  
20 the parent or guardian of a minor pupil.

1 (b) The person to whom the disclosure is made agrees to use the information  
2 only for the purposes for which the disclosure is made.

**END INS 4-21**

**INS 4-25** ✓

3 (a) The department.

4 (b) A school board.

5 (c) A public school, including a charter school. ✓ ✓

6 (d) If the pupil is attending a private school under s. 118.60 or 119.23, the  
7 private school participating in the program under s. 118.60 or 119.23. ✓ ✓

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2           *to create* 115.28 (61), 115.297 (7), 115.298, 118.125 (2) (d) 1., 118.125 (2r) and  
3           118.125 (8) of the statutes; **relating to:** pupil data, the disclosure of pupil  
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19 member or employee acted with actual malice in failing to disclose the information.  
20 A school district may not be held liable for any damages caused by the nondisclosure  
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22 or its agent acted with gross negligence or with reckless, wanton, or intentional  
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3 outsourced school services or functions if the contractor, consultant, volunteer, or  
4 other person satisfies the following conditions:

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

13           118.125 (2r) REDISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION.  
14 Notwithstanding sub. (2) (a) to (p), a school board may not disclose personally  
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16 the following apply:

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5 private school participating in the program under s. 118.60 or 119.23.

6 **SECTION 9. Nonstatutory provisions.**

7 (1) STUDENT INFORMATION SYSTEM. Notwithstanding section 115.298 (3) of the  
8 statutes, as created by this act, the report required to be submitted by January 15,  
9 2015, shall include any pupil data proposed to be included in the student information  
10 system since January 1, 2014.

11 (END)

**Knepp, Fern**

---

**From:** Ozalp, Jessica  
**Sent:** Friday, January 31, 2014 3:07 PM  
**To:** Knepp, Fern  
**Subject:** ferpa language

**§99.33 What limitations apply to the redisclosure of information?**

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

Jessica E. Ozalp  
Staff Attorney  
Wisconsin Legislative Council  
[Jessica.Ozalp@legis.wisconsin.gov](mailto:Jessica.Ozalp@legis.wisconsin.gov)  
(608) 266-2982

Telephone call  
2-3  
from Jessica  
Wants section 7 of bill  
to be more like FERPA  
2nd part is a direct prohibition  
on the recipient



before 2:00

State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBs0249/02/P3  
PG&FFK:cjs:rs

In 2-3  
Out Today

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rnr

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6           (b) For purposes of par. (a), “aggregate data” means data collected or reported  
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13           **115.298 Pupil data. (1)** In this section, “student information system” means  
14 the student information system under s. 115.28 (12).

15           **(2)** The department shall post on its Internet site a comprehensive list of every  
16 distinct type of individual pupil data that the department collects or may collect,  
17 including all of the following:

18           (a) Individual pupil data required by state or federal law to be reported to the  
19 department.

20           (b) Individual pupil data included in the student information system.

21           (c) Individual pupil data that has been proposed to be included in the student  
22 information system, including a statement regarding the reason for the proposed  
23 inclusion.

24           **(3)** Annually by January 15, the department shall notify the governor, and the  
25 appropriate standing committees of the legislature under s. 13.172 (3), of any

1 individual data that is proposed to be included in the student information system  
2 since the last report under this subsection.

3 (4) The department shall promulgate a rule listing every distinct type of  
4 individual pupil data that the department collects and revise the rule periodically  
5 to keep it up to date. Revisions to the rule that are necessary in order to comply with  
6 federal law shall be promulgated as emergency rules under s. 227.24 for the period  
7 before the effective date of the permanent rules, but not to exceed the period  
8 authorized under s. 227.24 (1) (c), subject to extension under s. 227.24 (2).  
9 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to  
10 provide evidence that promulgating the rule as an emergency rule is necessary for  
11 the preservation of the public peace, health, safety, or welfare and is not required to  
12 provide a finding of emergency for the rule.

13 (5) The department shall develop a detailed data security plan that includes  
14 all of the following:

15 (a) Guidelines for authorizing access to the student information system and to  
16 individual pupil data, including guidelines for authenticating authorized access.

17 (b) Privacy compliance standards.

18 (c) Privacy and security audits.

19 (d) Breach planning, notification, and procedures.

20 (e) Data retention and disposition policies.

21 (f) Data security policies, including electronic, physical, and administrative  
22 safeguards, such as data encryption and employee training.

23 (6) The department shall ensure that any contract with a private vendor that  
24 governs databases, assessments, or instructional supports and that includes pupil  
25 data or pupil data that has been redacted to remove pupil and parent identifying

1 information, includes provisions to safeguard the privacy and security of the data  
2 and includes penalties for noncompliance with the provisions.

3 **SECTION 4.** 118.125 (2) (a) of the statutes is amended to read:

4 118.125 (2) (a) A pupil, or the parent or guardian of a minor pupil, shall, upon  
5 request, be shown and provided with a copy of the pupil's ~~progress~~ pupil records other  
6 than the pupil's behavioral records.

7 **SECTION 5.** 118.125 (2) (d) of the statutes is renumbered 118.125 (2) (d) 2. and  
8 amended to read:

9 118.125 (2) (d) 2. Pupil records shall be made available to persons employed by  
10 the school district which the pupil attends who are required by the department under  
11 s. 115.28 (7) to hold a license, law enforcement officers who are individually  
12 designated by the school board and assigned to the school district, and other school  
13 district officials who have been determined by the school board to have legitimate  
14 educational interests, including safety interests, in the pupil records. Law  
15 enforcement officers' records obtained under s. 938.396 (1) (c) 3. shall be made  
16 available as provided in s. 118.127. A school board member or an employee of a school  
17 district may not be held personally liable for any damages caused by the  
18 nondisclosure of any information specified in this ~~paragraph~~ subdivision unless the  
19 member or employee acted with actual malice in failing to disclose the information.  
20 A school district may not be held liable for any damages caused by the nondisclosure  
21 of any information specified in this ~~paragraph~~ subdivision unless the school district  
22 or its agent acted with gross negligence or with reckless, wanton, or intentional  
23 misconduct in failing to disclose the information.

24 **SECTION 6.** 118.125 (2) (d) 1. of the statutes is created to read:



1           118.125 (2) (d) 1. In this paragraph, “school district official” includes a  
2 contractor, consultant, volunteer, or any other person to whom the school board has  
3 outsourced school services or functions if the contractor, consultant, volunteer, or  
4 other person satisfies the following conditions:

5           a. He or she performs a service or function for which the school board would  
6 otherwise use school district employees.

7           b. He or she is under the direct control of the school board with respect to the  
8 use and maintenance of pupil records.

9           c. He or she is subject to the requirements governing the use and redisclosure  
10 of personally identifiable information from pupil records under this section and  
11 under federal law.

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

13           118.125 (2r) USE AND REDISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION.

14 (a) Notwithstanding sub. (2) (a) to (p), a school board may not disclose personally  
15 identifiable information, as defined in 34 CFR 99.3, from pupil records unless the  
16 person to whom the disclosure is being made agrees not to disclose the information  
17 to any other person without first obtaining the consent of the pupil, or the parent or  
18 guardian of a minor pupil.

19 (b) A person who receives personally identifiable information, as defined in 34  
20 CFR 99.3, under sub. (2) may use the information only for the purposes for which the  
21 disclosure is made under sub. (2).

22           **SECTION 8.** 118.125 (8) of the statutes is created to read:

23           118.125 (8) POLITICAL AFFILIATION AND RELIGION. None of the following may  
24 request a pupil, or a pupil’s parent or guardian, to disclose the pupil’s political  
25 affiliation or religion:

- 1 (a) The department.  
2 (b) A school board.  
3 (c) A public school, including a charter school.  
4 (d) If the pupil is attending a private school under s. 118.60 or 119.23, the  
5 private school participating in the program under s. 118.60 or 119.23.

6 **SECTION 9. Nonstatutory provisions.**

7 (1) STUDENT INFORMATION SYSTEM. Notwithstanding section 115.298 (3) of the  
8 statutes, as created by this act, the report required to be submitted by January 15,  
9 2015, shall include any pupil data proposed to be included in the student information  
10 system since January 1, 2014.

11 (END)



Monday



stays

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO ASSEMBLY BILL 618

SAV

Gen Cat

1 AN ACT to renumber and amend 118.125 (2) (d); to amend 118.125 (2) (a); and  
2 to create 115.28 (61), 115.297 (7), 115.298, 118.125 (2) (d) 1. and 118.125 (2r)  
3 of the statutes; relating to: pupil data, the disclosure of pupil records, granting  
4 rule-making authority, and providing an exemption from rule-making  
5 procedures.

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

6 SECTION 1. 115.28 (61) of the statutes is created to read:

7 115.28 (61) ~~AGGREGATE~~ <sup>INDIVIDUAL</sup> PUPIL DATA. (a) ~~Unless otherwise provided by state law,~~ <sup>Ensure that the department does not</sup>  
8 ~~provide only aggregate pupil data to federal agencies, except that the state~~  
9 ~~superintendent may provide pupil data~~ <sup>individual</sup> ~~pertaining to an individual pupil in any of~~  
10 ~~the following circumstances:~~ <sup>to a federal agency</sup>

11 1. ~~The pupil registers for or takes a national or multistate assessment.~~

1       2. The pupil voluntarily participates in a program for which transferring  
2 individual data is a condition or requirement of participation.

3               3. The pupil is classified as migrant for federal reporting purposes.

4               4. A federal agency is performing a compliance review.

5               (b) For purposes of par. (a), "aggregate data" means data collected or reported  
6 at the group, cohort, or institutional level.

7               **SECTION 2.** 115.297 (7) of the statutes is created to read:

8               115.297 (7) ENFORCEMENT. The attorney general or any district attorney may  
9 bring an action in circuit court for the enforcement of this section, including an action  
10 to restrain by temporary or permanent injunction any violation of this section.

11              **SECTION 3.** 115.298 of the statutes is created to read:

12              **115.298 Pupil data.** (1) In this section, "student information system" means  
13 the student information system under s. 115.28 (12).

14              (2) The department shall post on its Internet site a comprehensive list of every  
15 distinct type of individual pupil data that the department collects or may collect,  
16 including all of the following:

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18 department.

19              (b) Individual pupil data included in the student information system.

20              (c) Individual pupil data that has been proposed to be included in the student  
21 information system, including a statement regarding the reason for the proposed  
22 inclusion.

23              (3) Annually by January 15, the department shall notify the governor, and the  
24 appropriate standing committees of the legislature under s. 13.172 (3), of any

1 individual data that is proposed to be included in the student information system  
2 since the last report under this subsection.

3 (4) The department shall promulgate a rule listing every distinct type of  
4 individual pupil data that the department collects and revise the rule periodically  
5 to keep it up to date. Revisions to the rule that are necessary in order to comply with  
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9 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to  
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14 educational interests, including safety interests, in the pupil records. Law  
15 enforcement officers' records obtained under s. 938.396 (1) (c) 3. shall be made  
16 available as provided in s. 118.127. A school board member or an employee of a school  
17 district may not be held personally liable for any damages caused by the  
18 nondisclosure of any information specified in this ~~paragraph~~ subdivision unless the  
19 member or employee acted with actual malice in failing to disclose the information.  
20 A school district may not be held liable for any damages caused by the nondisclosure  
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1           118.125 (2) (d) 1. In this paragraph, “school district official” includes a  
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5           a. He or she performs a service or function for which the school board would  
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7           b. He or she is under the direct control of the school board with respect to the  
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9           c. He or she is subject to the requirements governing the use and redisclosure  
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19 (b) A person who receives personally identifiable information, as defined in 34  
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21 disclosure is made under sub. (2).

22           **SECTION 8. Nonstatutory provisions.**

23 (1) STUDENT INFORMATION SYSTEM. Notwithstanding section 115.298 (3) of the  
24 statutes, as created by this act, the report required to be submitted by January 15,





**Rose, Stefanie**

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**From:** Grant, Peter  
**Sent:** Monday, February 10, 2014 12:29 PM  
**To:** LRB.Legal  
**Subject:** FW: LRB 13s0249 Topic: Pupil records

Thanks.

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**From:** Ozalp, Jessica  
**Sent:** Monday, February 10, 2014 12:28 PM  
**To:** Grant, Peter  
**Subject:** FW: LRB 13s0249 Topic: Pupil records

Could you jacket for Pridemore please?

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**From:** Pusch, Liz  
**Sent:** Monday, February 10, 2014 12:25 PM  
**To:** Ozalp, Jessica  
**Subject:** RE: LRB 13s0249 Topic: Pupil records

Thanks Jessica!  
Could I get this jacketed?  
Liz

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**From:** Ozalp, Jessica  
**Sent:** Monday, February 10, 2014 12:11 PM  
**To:** Pusch, Liz  
**Subject:** FW: LRB 13s0249 Topic: Pupil records

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**From:** LRB.Legal  
**Sent:** Monday, February 10, 2014 9:32 AM  
**To:** Ozalp, Jessica  
**Subject:** LRB 13s0249 Topic: Pupil records

The attached proposal has been jacketed for introduction.

A copy has also been sent to:

<< File: LRB s0249\_2.pdf >>