

2017 DRAFTING REQUEST**Bill**For: **Legislative Council -study cmmte 266-0680** Drafter: **tkuczens**By: **Brian Larson** Secondary Drafters:Date: **10/18/2016** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **brian.larson@legis.wisconsin.gov**
 Carbon copy (CC) to: **tracy.kuczenski@legis.wisconsin.gov**
fern.knepp@legis.wisconsin.gov
katie.bender-olson@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

School Data Study Committee -- Responsibilities of State Superintendent related to privacy of pupil data

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens 10/24/2016				
/P1	tkuczens 11/1/2016	jdyer 11/2/2016	lparisi 10/25/2016		
/P2	tkuczens 11/4/2016	jdyer 11/4/2016	lparisi 11/2/2016		
/P3	tkuczens	jdyer	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P4	tkuczens 11/8/2016		hkohn 11/9/2016		
/1	tkuczens 11/20/2016	jdye 11/21/2016	lparisi 11/9/2016		
/2	tkuczens 11/30/2016	wjackson 11/30/2016	mbarman 11/30/2016	rmilford 2/2/2017	

FE Sent For:

<END>

↳ Not
Needed

2017 DRAFTING REQUEST

Bill

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School Data Study Committee -- Responsibilities of State Superintendent related to privacy of pupil data

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/P3	tkuczens	jdyer	lparisi		

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	11/8/2016	11/9/2016	11/4/2016		
/P4	tkuczens 11/9/2016		hkohn 11/9/2016		
/1	tkuczens 11/20/2016	jdyer 11/21/2016	lparisi 11/9/2016		
/2	tkuczens 11/30/2016	wjackson 11/30/2016	mbarman 11/30/2016		

FE Sent For:

<END>

Re-Submitted
per WLS



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0445/PA

TKK:jld

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today (no changes)

- 1 **AN ACT** *to create* 115.285 of the statutes; **relating to:** responsibilities of state
2 superintendent related to privacy and security of pupil data.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding privacy and security of pupil data. The bill requires the Superintendent to provide guidance and training to school districts and schools in implementing and administering a data privacy and security plan, in responding to incidents involving the unauthorized disclosure of pupil data, and in complying with state and federal laws governing privacy and security of pupil data, including parental complaint procedures and other provisions of the federal Family Educational Rights and Privacy Act and the Wisconsin Pupil Records Law. The bill also requires the Superintendent to take certain steps to engage with members of the public and governmental officials regarding data privacy and security issues.

- 3 **SECTION 1.** 115.285 of the statutes is created to read:
4 **115.285 Privacy of pupil data. (1) DEFINITION.** In this section:

1 (a) "Parental choice program" means either or both of the programs under ss.
2 118.60 and 119.23.

3 (b) "Pupil data" means all of the following:

4 1. Information contained in education records, as defined in 34 CFR 99.3.

5 2. Information contained in pupil records, as defined in s. 118.125 (1) (d).

6 **(2) COMPLIANCE WITH LAWS GOVERNING PRIVACY OF PUPIL DATA.** The state
7 superintendent shall provide guidance and training to school districts and charter
8 schools in complying with state and federal privacy or security laws, including
9 parental complaint procedures and other provisions of the federal Family
10 Educational Rights and Privacy Act, 20 USC 1232g, and s. 118.125. To the extent
11 private schools participating in a parental choice program are required to comply
12 with these state and federal privacy and security laws, the state superintendent
13 shall provide the same guidance and training to these private schools.

COMMENT: This provision, together with subsections (3) and (4), below, would
require the department to provide guidance and training in implementing and
administering a data privacy and security plan, in responding to incidents involving the
unauthorized disclosure of pupil data, and in complying with state and federal laws
governing privacy and security of pupil data. This would include providing services to
charter schools and private schools participating in the choice program. Does this reflect
the committee's intent?

14 **(3) BREACH OF PRIVACY INCIDENT RESPONSE.** The state superintendent shall do
15 all of the following:

16 (a) Establish and administer a program to respond to the unauthorized
17 disclosure of pupil data collected by the department and ensure that incidents
18 involving the unauthorized disclosure of pupil data are reported, investigated, and
19 mitigated, as appropriate.

1 (b) Provide guidance and training to a school, school district, charter school, or
2 private school participating in a parental choice program regarding incidents
3 involving the unauthorized disclosure of pupil data.

4 (4) DATA PRIVACY AND SECURITY PLAN. (a) The state superintendent shall work
5 in collaboration with the department of administration to develop all of the following:

6 1. A data privacy and security plan for the protection of pupil data collected by
7 the department. The state superintendent shall administer the plan prepared under
8 this subdivision.

9 2. A model data privacy and security plan for the protection of pupil data
10 collected or maintained by a school, school district, charter school, or private school
11 participating in a parental choice program. The state superintendent shall provide
12 guidance on the implementation and administration of a data privacy and security
13 plan to the extent that the department has expertise.

14 (b) The state superintendent shall include all of the following in each plan
15 required under this subsection:

16 1. Guidelines for access to pupil data and to the student information system
17 under s. 115.383 and the longitudinal data system of student information under s.
18 115.297, including guidelines for authentication of individuals authorized to access
19 pupil data and these pupil data systems.

20 2. Procedures for data privacy and security audits.

21 3. Procedures to be followed in the event of an unauthorized disclosure of pupil
22 data.

Kuczenski, Tracy

From: Larson, Brian
Sent: Tuesday, October 18, 2016 10:58 AM
To: Kuczenski, Tracy
Cc: Knepp, Fern; Bender-Olson, Katie
Subject: FW: Bill Draft #2 for School Data Study Committee

Hi Tracy,

Following up on our phone call of a few minutes ago, I made a slight adjustment to the language of (c) 2., below. Here is the whole thing again. Please use this e-mail instead of the prior one. Thanks!

-B

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding student data privacy. Specifically, the State Superintendent must ensure compliance with state and federal privacy laws, establish a privacy incident response program, develop certain processes or model processes regarding student data privacy, and take specified actions to engage with members of the public and governmental officials regarding student data privacy issues.

Section 1: 115.28 (64) of the statutes is created to read:
115.28 (64). STUDENT DATA PRIVACY.

(a) *Compliance.*

1. Ensure that student data collected by the department is handled in full compliance with the federal Family Educational Rights and Privacy Act and other federal or state privacy or security laws.
2. Provide guidance and training to school districts, charter schools, and private schools participating in the parental choice program under s. 118.60 or 119.23 in complying with such laws.

COMMENT: This and similar provisions in paragraphs (b), (c), and (d) below would require the department to provide services and support to school districts. In addition, the department would provide similar services and support to charter schools and private schools participating in the choice program, in certain cases. Does this adequately reflect the committee's intent?

(b) *Privacy incident response.*

1. Establish and administer a departmental privacy incident response program to ensure that incidents involving unauthorized disclosure of student data collected by the department are properly reported, investigated, and mitigated, as appropriate.
2. Provide guidance and training to school districts, charter schools, and private schools participating in the parental choice program under s. 118.60 or 119.23 that choose to establish privacy incident response programs administered by school districts or such schools.

(c) *Data security plan.*

1. Develop and administer a data security plan for the protection of student data collected by the department.

2. Develop a model data security plan for the protection of student data collected or maintained by school districts, charter schools, and private schools participating in the parental choice program under s. 118.60 or 119.23, and provide guidance and training to school districts and such schools that choose to implement a data security plan.
3. Plans under this paragraph shall be developed in collaboration with the department of administration and shall include:
 - a. Guidelines for access to student data and student data systems, including guidelines for authentication of authorized access.
 - b. Privacy and security audits.
 - c. Procedures to follow in the event of an unauthorized disclosure of student data.
 - d. Data security training and policies including technical, physical, and administrative safeguards.
 - e. Data retention and disposition policies.
 - f. A process for evaluating and updating the data security plan, at least on an annual basis.

(d) *Privacy complaint policy.* Develop a model privacy complaint policy allowing parents or eligible students to file complaints with school districts, charter schools, and private schools participating in the parental choice program under s. 118.60 or 119.23 regarding alleged privacy violations or inability to access student records maintained by school districts or such schools, and provide guidance and training to school districts and such schools in administering a privacy complaint policy.

(e) *Stakeholder engagement.* Engage with members of the public and governmental officials regarding the quality, usefulness, openness, privacy, and security of student data. In collaboration with cooperative educational service agencies, develop and promote best practices and policy recommendations to ensure that student data practices and the use of technologies sustain and enhance student data privacy and security protections.

(f) *Estimate of student data impact.* Any bill impacting privacy or security of student data shall, before any vote is taken thereon by either house of the legislature if the bill is not referred to a standing committee, or before any public hearing is held before any standing committee or, if no public hearing is held, before any vote is taken by the committee, incorporate a reliable estimate of the anticipated impact on privacy or security of student data. The estimate shall also indicate the type of personally identifying information collected and number of students affected under such bill. Such estimates shall be made in writing by the department.

(g) *Definition.* For purposes of this subsection, "Student data" means information contained in education records, as defined in 34 CFR 99.3, and pupil records, as defined in s. 118.125 (1) (d).



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-04457? P1
TKK: JLD
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 10/24/16
what 10/26/16 or 10/27

X

Gen

1 AN ACT ...; relating to: responsibilities of state superintendent related to privacy
2 of pupil data.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding student data privacy. Specifically, the State Superintendent must ensure compliance with state and federal privacy laws, establish a privacy incident response program, develop certain processes or model processes regarding student data privacy, and take specified actions to engage with members of the public and governmental officials regarding student data privacy issues.

SECTION 1. 115.285 of the statutes is created to read:

115.285 Privacy of pupil data. (1) DEFINITION. In this section:

(a) "Parental choice program" means either or both of the programs under s. 118.60 and 119.23.

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(b) "Pupil data" means all of the following:

1. Information contained in education records, as defined in 34 CFR 99.3.

2. Information contained in pupil records, as defined in s. 118.125 (1) (d).

(2) COMPLIANCE WITH LAWS GOVERNING PRIVACY OF PUPIL DATA. The state superintendent shall do all of the following:

(a) Ensure that pupil data collected by the department is handled in full compliance with s. 118.125, with the federal family educational rights and privacy act, 20 USC 1232g, and with other federal or state privacy or security laws.

****NOTE: This particular paragraph does not require the State SUPERINTENDENT to do anything other than what he or she is already required to do: comply with existing state and federal law. Is there a specific concern that the committee members sought to address by including this paragraph, or a specific federal law or state statute that the committee believes does not currently apply to the SSI or that the SSI is not following but that the committee wants to make applicable to the SSI? If so, that law or statute should be explicitly identified so that the SSI is on notice as to what its statutory obligations are.

NO CS

Alternatively, is the committee trying to impose some sort of enforcement mechanism or consequence on the SSI for a perceived failure to comply with FERPA or s. 118.125? If so, this paragraph would not accomplish that objective.

****NOTE: How is pupil data privacy, as addressed in this bill, different than the confidentiality of pupil data governed under s. 118.125?

(b) Provide guidance and training to school districts, charter schools, and private schools participating in a parental choice program in complying with the state and federal laws described under subd. 1 *par. (a)*.

****NOTE: Do you want to include private schools participating in the special needs scholarship program under s. 115.7915 in this and other paragraphs?

NOTE: This and similar provisions in subsections (3), (4), and (5) below, would require the department to provide services and support to school districts. In addition, the department would provide similar services and support to charter schools and private schools participating in the choice program, in certain cases. Does this adequately reflect the committee's intent?

(3) BREACH OF PRIVACY INCIDENT RESPONSE. The state superintendent shall do all of the following:

1 (a) Establish and administer a program to respond to the unauthorized
2 disclosure of pupil data and ensure that incidents involving the unauthorized
3 disclosure of pupil data are properly reported, investigated, and mitigated, as
4 appropriate.✓

5 (b) Provide guidance and training to a school district, charter school, or private
6 school participating in a parental choice program✓that chooses to establish a breach
7 of privacy incident response program on the implementation and administration of
8 such a program.✓

9 (4) DATA SECURITY PLAN.✓ (a) The state superintendent shall work in
10 collaboration with the department of administration✓to develop all of the following

11 do all of the following:

12 1. A data security plan✓for the protection of pupil data collected by the
13 department.✓The state superintendent shall administer the plan prepared under
14 this subdivision.✓

15 2. A model data security plan✓for the protection of pupil data collected or
16 maintained by a school district, charter school, or private school participating in a
17 parental choice program.✓The state superintendent shall provide guidance and
18 training to a✓school district, charter school, or private school participating in a
19 parental choice program that chooses to implement a data security plan.✓

20 (b) The state superintendent shall include all of the following in each plan
21 required under this subsection:✓

1 1. Guidelines for access to pupil data and pupil data systems, including
2 guidelines for authentication of individuals authorized to access pupil data and pupil
3 data systems.✓

****NOTE: Do you want to define a "pupil data system"?

4 2. Privacy and security audits.✓

****NOTE: Can you elaborate on the meaning of a "privacy audit" or a "security
audit"?

5 3. Procedures to be followed in the event of an unauthorized disclosure of pupil
6 data.✓

7 4. Data security training protocols and policies, including technical, physical,
8 and administrative safeguards against unauthorized access or disclosure.✓

9 5. Data retention and disposition policies.✓

10 6. A process for evaluating and updating the data security plan on at least an
11 annual basis.✓

12 (5) BREACH OF PRIVACY COMPLAINT POLICY.✓ The state superintendent shall
13 develop a model breach of privacy complaint policy to govern the filing of a complaint
14 by a parent or guardian or an eligible pupil.✓ The state superintendent shall ensure
15 that the policy authorizes a parent or guardian or eligible pupil to file a complaint
16 with a school district, charter school, or private school participating in a parental
17 choice program in the event of an alleged unauthorized disclosure of pupil data or an
18 inability to access pupil records maintained by a school district, charter school, or
19 private school participating in a parental choice program,✓ and that the policy
20 provides guidance and training to school districts, charter schools, and private

1 schools participating in a parental choice program in administering a breach of
2 privacy complaint policy.✓

****NOTE: This subsection refers to "an eligible pupil."✓ What would make a pupil eligible to file a complaint?

****NOTE: This subsection also refers to "pupil records." U Is this meant to be distinguished from "pupil data" as defined in sub. (1) (b)?

****NOTE: Private schools participating in a parental choice program are not required under current law to comply with s. 118.125 governing the confidentiality of pupil records. This bill does not require private schools participating in a parental choice program to comply with state or federal law governing the confidentiality of pupil records or the privacy of pupil data under this section. Okay?

3 (6) STAKEHOLDER ENGAGEMENT.✓ The state superintendent shall engage with
4 members of the public and governmental officials regarding the quality, usefulness,
5 openness, privacy, and security of pupil data.✓ In collaboration with cooperative
6 educational service agencies, develop and promote best practices and policy
7 recommendations to ensure that pupil data practices and the use of technologies
8 sustain and enhance the privacy and security of pupil data.✓

9 (7) ESTIMATE OF PUPIL DATA IMPACT.✓ Any bill impacting the privacy or security
10 of pupil data shall, before any vote is taken thereon by either house of the legislature
11 if the bill is not referred to a standing committee, or before any public hearing is held
12 before any standing committee or, if no public hearing is held, before any vote is taken
13 by the committee, incorporate a reliable estimate of the anticipated impact on the
14 privacy or security of pupil data.✓ The estimate shall also indicate the type of
15 personally identifying information collected and number of pupils^{gs} affected under
16 such bill. Such estimates shall be made in writing by the department.

****NOTE: This subsection does not clearly identify the agency or entity that must make the "estimate of pupil data impact," nor the nature of the estimate. Will this be DPI's responsibility to estimate? What if the statutes affected in a bill are not under DPI's purview (for example, what if a bill would require a prospective high school driver to indicate the individual's school or grade level on the individual's application for a driver's

license?).[✓] How should such bills be referred to DPI? Also, is this intended to be a fiscal estimate? Or an estimate of time or effort to comply? Or something else entirely?

****NOTE: Do you want to define "personally identifying information"?

1

(END)

Oct. 31, 2010

LRB - 0449/PI Harich, Katie, Brian

(data)

NO for now

p. 1 change definition to PEP that is reporting to DPI (over name)

p. 2 sub (2)(a) and (b) - eliminate requirement to follow the law. (file)

* Note line 11 - ~~PEP~~ No Donor include special needs readership program.

p. 3 line 2 add "collected by the department" after "data"

p. 3 line 3 - strike "personally"

Require DPI to est plan/program for protection of / response to unauthorized disclosure of pupil data

reference to pupil records when reference is made to all special ed kids

✓ p. 4 note 1: Q to DPI: SIS, student logins 2nd system? Wait for answer.

✓ p. 4 line 1 eliminate "privacy and"

✓ p. 4 line 19 note: 18 yrs or older

Combine
p. 4 lines 7-8 DPI security fears must include an audit plan
audit that include:

- analysis of systems & protocols performed by private firm or (appropriate agency) or expertise in data security
- steps agency to look for (process) inefficiencies weaknesses and reliability to withstand breaches

* annually

* ~~audit board; division of state technology (wanted)~~

~~For private security data risk review~~

- Mobility sub (7) to be a requirement of DPI but no "tag"
- remove notes

Kuczenski, Tracy

From: Hutkowski, Hariah
Sent: Monday, October 31, 2016 2:52 PM
To: Kuczenski, Tracy; Bender-Olson, Katie; Larson, Brian
Subject: idea on pg 5 line 7

Tracy, Katie, Brian,

We can assure the duty lands specifically to DPI if we are specific with the narrowing of definitions. What if we said, ..."any bill that changes pupil data collected by the department OR the security of pupil data" Right now we simply say "security of pupil data" when in reality we want 2 things, "security" (which could be more obtuse) and "pupil data" (which is simple and narrowly defined)

Perhaps we determined this but something prompted me to double check that point.

Sincerely,

Hariah Hutkowski
Research Assistant /Committee Clerk
Rep. Thiesfeldt, Education Chair
52nd Assembly District (Fond du Lac)
608-266-3156

Kuczenski, Tracy

From: Bender-Olson, Katie
Sent: Tuesday, November 01, 2016 11:56 AM
To: Knepp, Fern; Kuczenski, Tracy
Cc: Larson, Brian
Subject: FW: School Data Study Committee- technical questions for drafts

Tracy and Fern,

I asked DPI for their input on the phrase "every distinct type of individual pupil data" for the Data Inventory Draft (LRB 0377/P1) and the term "pupil data system" for the State Superintendent Responsibilities Draft (LRB 0445/P1). Their response is below.

Fern – we can discuss the language DPI suggests as examples of "distinct types" of pupil data.

Tracy – it sounds like the reference to "pupil data systems" that appears on page 3, line 21 should reference both the SIS and the longitudinal data system.

Thank you,
Katie

From: Pettack, Deanna L - DPI
Sent: Tuesday, November 01, 2016 11:34 AM
To: Bender-Olson, Katie <Katherine.Bender-Olson@legis.wisconsin.gov>
Subject: RE: School Data Study Committee- technical questions for drafts

Hi Katie –

For legislative drafting, the department would suggest:

The Department is required to publish on its website an inventory of pupil data, including but not limited to demographic, academic, enrollment, attendance, graduation and assessment data, collected and maintained for state and federal reporting purposes.

(Optional addition: information related to individual student applications, complaints and dispute resolutions are not included under this requirement).

We also believe the term "data system" is appropriate with cross-reference to the "student information system" and "longitudinal data system."

I received your voicemail regarding data collections for the Choice Schools and SNSP – I will give you a follow up call on those.

Thanks,

Dee

From: Bender-Olson, Katie [<mailto:Katherine.Bender-Olson@legis.wisconsin.gov>]
Sent: Friday, October 28, 2016 10:18 AM
To: Pettack, Dee DPI <Dee.Pettack@dpi.wi.gov>

Cc: Larson, Brian <Brian.Larson@legis.wisconsin.gov>

Subject: School Data Study Committee- technical questions for drafts

Dee,

We are currently working on bill drafts for the School Data Study Committee. The members requested two drafts at the September meeting, one relating to a student data inventory and the other assigning specific privacy-related duties to DPI. Several technical questions arose during initial drafting that I wanted to get your input about.

First, the Study Committee wants to require DPI to create and post an inventory containing all of the student data elements that DPI collects. However, the term "student data element" is not a term that exists in the statutes, so we would either have to use an alternative term or create a definition. We considered phrasing the requirement as one for an inventory "of every distinct type of individual pupil data collected by the department."

- Does "every distinct type of individual pupil data collected by the department" work? Do you have other wording suggestions?

Second, the Study Committee discussed assigning certain duties to the State Superintendent related to student data privacy. One of the discussed duties is for DPI to create a data security plan for protecting pupil data it collects. Another is to create a model data security plan that school districts can use as a pattern for developing their own district data security plans to protect pupil data they collect.

Other states have required their state data security plans to include guidelines for access to pupil data and "pupil data systems," including guidelines for authentication of individuals authorized to access pupil data and pupil data systems. "Pupil data system" is not a term that appears in our statutes, and we need to determine which term/s to use.

- Should we use the term "student information system"? Should we also reference the "longitudinal data system" under s. 115.297? Other thoughts?

If you could get back to me early next week, that would be very helpful.

Have a great weekend,

Katie

Katie Bender-Olson

Wisconsin Legislative Council

(608) 266-2988

katie.bender-olson@legis.wisconsin.gov



State of Wisconsin
2017 - 2018 LEGISLATURE

P2
LRB-0445/P1
TKK:jld
RMR
insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 11/2 wanted today

Regen

4

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3 SECTION 1. 115.285 of the statutes is created to read:

4 **115.285 Privacy of pupil data.** (1) DEFINITION. In this section:

5 (a) "Parental choice program" means either or both of the programs under ss.

6 118.60 and 119.23.

1 (b) "Pupil data" means all of the following:

2 1. Information contained in education records, as defined in 34 CFR 99.3.

3 2. Information contained in pupil records, as defined in s. 118.125 (1) (d).

4 (2) COMPLIANCE WITH LAWS GOVERNING PRIVACY OF PUPIL DATA. The state
5 superintendent shall (do all of the following: e

6 (a) Ensure that pupil data collected by the department is handled in full
7 compliance with s. 118.125, with the federal Family Educational Rights and Privacy
8 Act, 20 USC 1232g, and with other federal or state privacy or security laws.

le
****NOTE: This particular paragraph does not require the state superintendent to do anything other than what he or she is already required to do: comply with existing state and federal law. Is there a specific concern that the committee members sought to address by including this paragraph, or a specific federal law or state statute that the committee believes does not currently apply to the SSI or that the SSI is not following but that the committee wants to make applicable to the SSI? If so, that law or statute should be explicitly identified so that the SSI is on notice as to what its statutory obligations are.

Alternatively, is the committee trying to impose some sort of enforcement mechanism or consequence on the SSI for a perceived failure to comply with FERPA or s. 118.125? If so, this paragraph would not accomplish that objective.

****NOTE: How is pupil data privacy, as addressed in this bill, different than the confidentiality of pupil data governed under s. 118.125?

9 no pb (b) Provide guidance and training to school districts, charter schools, and ✓
10 private schools participating in a parental choice program in complying with the
11 state and federal laws described under par. (a). e federal Family Educational Rights
and Privacy Act, 20 USC 1232g, and with other federal or state privacy or security laws ✓

le
****NOTE: Do you want to include private schools participating in the special needs scholarship program under s. 115.7915 in this and other paragraphs?

NOTE: This and similar provisions in subsections (3), (4), and (5), below, would require the department to provide services and support to school districts. In addition, the department would provide similar services and support to charter schools and private schools participating in the choice program, in certain cases. Does this adequately reflect the committee's intent?

12 (3) BREACH OF PRIVACY INCIDENT RESPONSE. The state superintendent shall do
13 all of the following:

1 (a) Establish and administer a program to respond to the unauthorized
 2 disclosure of ^{collected by the department} pupil data and ensure that incidents involving the unauthorized
 3 disclosure of pupil data are properly reported, investigated, and mitigated, as
 4 appropriate.

5 (b) Provide guidance and training to a school district, charter school, or private
 6 school participating in a parental choice program that chooses to establish a breach
 7 of privacy incident response program on the implementation and administration of
 8 such a program.

9 (4) DATA SECURITY PLAN. (a) The state superintendent shall work in
 10 collaboration with the department of administration to develop all of the following:

11 1. A data security plan for the protection of pupil data collected by the
 12 department. The state superintendent shall administer the plan prepared under
 13 this subdivision.

14 2. A model data security plan for the protection of pupil data collected or
 15 maintained by a school district, charter school, or private school participating in a
 16 parental choice program. The state superintendent shall provide guidance and
 17 training to a school district, charter school, or private school participating in a
 18 parental choice program that chooses to implement a data security plan.

19 (b) The state superintendent shall include all of the following in each plan
 20 required under this subsection:

21 1. Guidelines for access to pupil data and ^{to the student information system under} pupil data systems, including ^{SO 115.383 and the longitudinal data}
 22 guidelines for authentication of individuals authorized to access pupil data and ^{system of student information} pupil ^{under}
 23 data systems. ^{SO 115.297} these

Insert 4-1

le ****NOTE: Do you want to define a "pupil data system"?

1 2. Privacy and security audits.

le ****NOTE: Can you elaborate on the meaning of a "privacy audit" or a "security audit"?

2 3. Procedures to be followed in the event of an unauthorized disclosure of pupil
3 data.

4 4. Data security training protocols and policies, including technical, physical,
5 and administrative safeguards against unauthorized access or disclosure.

6 5. Data retention and disposition policies.

7 6. A process for evaluating and updating the data security plan on at least an
8 annual basis.

9 (5) BREACH OF PRIVACY COMPLAINT POLICY. The state superintendent shall
10 develop a model breach of privacy complaint policy to govern the filing of a complaint
11 by a parent or guardian) or ^{of a minor pupil} ~~an eligible~~ pupil. ^{if the pupil is an adult} The state superintendent shall ensure
12 that the policy authorizes a parent or guardian) or ^{of a minor pupil} ~~eligible~~ pupil ^{to file a complaint}
13 with a school district, charter school, or private school participating in a parental ^{le a}
14 choice program in the event of an alleged unauthorized disclosure of pupil data or an ^{if the pupil is an adult}
15 inability to access pupil records maintained by ^{the} @ school district, charter school, or
16 private school participating in a parental choice program, and that the policy
17 provides guidance and training to school districts, charter schools, and private
18 schools participating in a parental choice program in administering a breach of
19 privacy complaint policy. ✓

le ****NOTE: This subsection refers to "an eligible pupil." What would make a pupil eligible to file a complaint?

6
****NOTE: This subsection also refers to "pupil records." Is this meant to be distinguished from "pupil data" as defined in sub. (1) (b)?

****NOTE: Private schools participating in a parental choice program are not required under current law to comply with s. 118.125 governing the confidentiality of pupil records. This bill does not require private schools participating in a parental choice program to comply with state or federal law governing the confidentiality of pupil records or the privacy of pupil data under this section. Okay?

1 **(6) STAKEHOLDER ENGAGEMENT.** The state superintendent shall engage with
2 members of the public and governmental officials regarding the quality, usefulness,
3 openness, privacy, and security of pupil data. In collaboration with cooperative
4 educational service agencies, develop and promote best practices and policy
5 recommendations to ensure that pupil data practices and the use of technologies
6 sustain and enhance the privacy and security of pupil data.

7 **(7) ESTIMATE OF PUPIL DATA IMPACT.** Any bill impacting the privacy or security
8 of pupil data shall, before any vote is taken thereon by either house of the legislature
9 if the bill is not referred to a standing committee, or before any public hearing is held
10 before any standing committee or, if no public hearing is held, before any vote is taken
11 by the committee, incorporate a reliable estimate of the anticipated impact on the
12 privacy or security of pupil data. The estimate shall also indicate the type of
13 personally identifying information collected and number of pupils affected under
14 such bill. Such estimates shall be made in writing by the department.

6
****NOTE: This subsection does not clearly identify the agency or entity that must make the "estimate of pupil data impact," nor the nature of the estimate. Will this be DPI's responsibility to estimate? What if the statutes affected in a bill are not under DPI's purview (for example, what if a bill would require a prospective high school driver to indicate the individual's school or grade level on the individual's application for a driver's license?). How should such bills be referred to DPI? Also, is this intended to be a fiscal estimate? Or an estimate of time or effort to comply? Or something else entirely?

****NOTE: Do you want to define "personally identifying information"?

Insert 5-7 ✓

INSERT 4-1

1 2. Instructions for the conducting of annual security audits. The state
2 superintendent shall include, at minimum, the following instructions: ✓

3 a. A private firm or a state agency with expertise in data security protocols
4 ~~must~~^{shall} conduct the audit. ✓

5 b. The entity selected to conduct the ~~audit~~^{shall} ~~must~~ conduct an analysis of pupil
6 data security systems and protocols to identify inefficiencies, weaknesses, and
7 suitability of the systems and protocols to withstand a breach. ✓

INSERT 5-7

8 ~~NO~~ The state superintendent ✓ shall prepare a pupil data impact report ✓ for any bill
9 introduced in either house of the legislature that changes the type or specificity of
10 pupil data collected by the department or that will have an effect on the security of
11 pupil data collected by the department. ✓ The department shall include in the report
12 a description of the changes to pupil data or effect on the security of pupil data,
13 including how that data will be affected, the number of pupils whose data will be
14 affected, and the risks to pupil data security associated with the action required
15 under the bill. ✓ The department shall submit the report required under this
16 subsection ✓ to the legislature under s. 13.172 (2) ✓ before any vote is taken on the bill
17 by either house of the legislature if the bill is not referred to a standing committee,
18 or, if the bill is referred to a standing committee, to the appropriate standing
19 committee of the legislature under s. 13.172 (3) ✓ before any public hearing is held
20 before the standing committee, or if no public hearing is held, before any vote is taken
21 by the committee. ✓

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



November 3, 2016

mtg. w/ Katic, Brian re: LRB-0445/p2

p. 2, lines ~~2~~ 4-8: to the extent these laws apply to private schools...

p. 4 - make clear that no school is required to establish a breach of privacy complaint policy

* require state superintendent to provide guidance and training in administering the policy if one is adopted

p. 5 - Ensure that DPI includes relevant info in the report ~~as the~~ ~~report~~ even if not explicitly listed.

p. 5 (end of sub.(7)) if standing committee holds hearing on the bill, require DPI to be present to testify about the report.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 11/4
wanted today

✓ Regen

1 AN ACT to create 115.285 of the statutes; relating to: responsibilities of state
2 superintendent related to privacy and security of pupil data.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding student data privacy. Specifically, the State Superintendent must ensure compliance with state and federal privacy laws, establish a privacy incident response program, develop certain processes or model processes regarding student data privacy, and take specified actions to engage with members of the public and governmental officials regarding student data privacy issues.

3 SECTION 1. 115.285 of the statutes is created to read:
4 **115.285 Privacy of pupil data. (1) DEFINITION.** In this section:
5 (a) "Parental choice program" means either or both of the programs under ss.
6 118.60 and 119.23.

1 (b) "Pupil data" means all of the following:

2 1. Information contained in education records, as defined in 34 CFR 99.3.

3 2. Information contained in pupil records, as defined in s. 118.125 (1) (d).

4 (2) COMPLIANCE WITH LAWS GOVERNING PRIVACY OF PUPIL DATA. The state

5 superintendent shall provide guidance and training to school districts, ^{and} charter

6 schools, and private schools participating in a parental choice program in complying

7 with s. 118.125 ^{with} and the federal Family Educational Rights and Privacy Act, 20 USC

8 1232g, and with other ^{or federal} federal or state privacy or security laws. ^{To the extent} are

NOTE: This and similar provisions in subsections (3), (4), and (5), below, would require the department to provide services and support to school districts. In addition, the department would provide similar services and support to charter schools and private schools participating in the choice program, in certain cases. Does this adequately reflect the committee's intent?

To the extent are required to comply with these state and federal privacy and security laws, the state superintendent shall provide the same guidance and training to these private schools.

9 (3) BREACH OF PRIVACY INCIDENT RESPONSE. The state superintendent shall do
10 all of the following:

11 (a) Establish and administer a program to respond to the unauthorized
12 disclosure of pupil data collected by the department and ensure that incidents
13 involving the unauthorized disclosure of pupil data are reported, investigated, and
14 mitigated, as appropriate.

15 (b) Provide guidance and training to a school district, charter school, or private
16 school participating in a parental choice program that chooses to establish a breach
17 of privacy incident response program on the implementation and administration of
18 such a program.

19 (4) DATA SECURITY PLAN. (a) The state superintendent shall work in
20 collaboration with the department of administration to develop all of the following:

1 1. A data security plan for the protection of pupil data collected by the
2 department. The state superintendent shall administer the plan prepared under
3 this subdivision.

4 2. A model data security plan for the protection of pupil data collected or
5 maintained by a school district, charter school, or private school participating in a
6 parental choice program. The state superintendent shall provide guidance and
7 training to a school district, charter school, or private school participating in a
8 parental choice program that chooses to implement a data security plan.

9 (b) The state superintendent shall include all of the following in each plan
10 required under this subsection:

11 1. Guidelines for access to pupil data and to the student information system
12 under s. 115.383 and the longitudinal data system of student information under s.
13 115.297, including guidelines for authentication of individuals authorized to access
14 pupil data and these pupil data systems.

15 2. Instructions for the conducting of annual security audits. The state
16 superintendent shall include, at minimum, the following instructions:

17 a. A private firm or a state agency with expertise in data security protocols shall
18 conduct the audit.

19 b. The entity selected to conduct the audit shall conduct an analysis of pupil
20 data security systems and protocols to identify inefficiencies, weaknesses, and
21 suitability of the systems and protocols to withstand a breach.

22 3. Procedures to be followed in the event of an unauthorized disclosure of pupil
23 data.

1 4. Data security training protocols and policies, including technical, physical,
2 and administrative safeguards against unauthorized access or disclosure.

3 5. Data retention and disposition policies.

4 6. A process for evaluating and updating the data security plan on at least an
5 annual basis.

cc
guidance, and training ✓

6 (5) BREACH OF PRIVACY COMPLAINT POLICY. The state superintendent shall
7 develop a model breach of privacy complaint policy to govern the filing of a complaint
8 by a parent or guardian of a minor pupil or a pupil if the pupil is an adult. The state
9 superintendent shall ensure that the policy authorizes a parent or guardian of a

10 ✓ minor pupil or a pupil if the pupil is an adult to file a complaint with the school
11 district, charter school, or private school participating in a parental choice program
12 in the event of an alleged unauthorized disclosure of pupil data or an inability to
13 access pupil records maintained by the school district, charter school, or private

14 school participating in a parental choice program, and that the policy provides
15 guidance and training to school districts, charter schools, and private schools
16 participating in a parental choice program in administering a breach of privacy
17 complaint policy.

18 (6) STAKEHOLDER ENGAGEMENT. The state superintendent shall engage with
19 members of the public and governmental officials regarding the quality, usefulness,
20 openness, privacy, and security of pupil data. In collaboration with cooperative
21 educational service agencies, develop and promote best practices and policy

✓
① The state superintendent shall provide guidance and training to a school district, charter school, or private school participating in a parental choice program that chooses to adopt a breach of privacy complaint policy in administering the policy. ✓

1 recommendations to ensure that pupil data practices and the use of technologies
2 sustain and enhance the privacy and security of pupil data.

3 (7) ESTIMATE OF PUPIL DATA IMPACT. The state superintendent shall prepare a
4 pupil data impact report for any bill introduced in either house of the legislature that
5 changes the type or specificity of pupil data collected by the department or that will
6 have an effect on the security of pupil data collected by the department. The
7 ^{state superintendent} ~~department~~ shall include in the report a description of the changes to pupil data or
8 effect on the security of pupil data, including how that data will be affected, the

9 number of pupils whose data will be affected, ^{and} the risks to pupil data security

10 associated with the action required under the bill. The ^{state superintendent} ~~department~~ shall submit the
11 report required under this subsection to the legislature under s. 13.172 (2) before any ^{the}

12 vote is taken on the bill by either house of the legislature if the bill is not referred to ^{consideration}
13 a standing committee, or, if the bill is referred to a standing committee, to the ^{of}

14 appropriate standing committee of the legislature under s. 13.172 (3) before any
15 public hearing is held before the standing committee, or if no public hearing is held,

16 before any vote is taken by the committee. ^Y

17

(END)

If a public hearing is held on
the bill, the state
superintendent or his or
her designee shall
be present at the
hearing to provide
testimony about the
report. ^Y

Kuczenski, Tracy

From: Bender-Olson, Katie
Sent: Tuesday, November 08, 2016 2:18 PM
To: Kuczenski, Tracy; Knepp, Fern
Cc: Larson, Brian
Subject: School Data Study Committee Bills - Prefatory Notes

Fern and Tracy,

I will be coming down in a few minutes to give you the changes to the School Data Study Committee drafts. Because of the changes, we also rewrote our Prefatory Notes and comments within the drafts. I am including the text below:

LRB-0377/P2

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill requires the State Superintendent of Public Instruction to create, maintain, and post a pupil data inventory on the Department of Public Instruction (DPI) website. The inventory must include every distinct type of pupil data collected by DPI from schools and school districts, a definition of the type of pupil data collected, the purpose for collecting the pupil data, and the state or federal law requiring collection of the pupil data. The data inventory must also be updated each time DPI begins collecting an additional type of pupil data or stops collecting a type of pupil data.

*Please change the "COMMENT" on the top page 2 into a "NOTE." The Comment at the end of the page can remain a "COMMENT."

— delete ~~the~~ sub. (5) and (7)

LRB-0445/P3

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding privacy and security of pupil data. The bill requires the Superintendent to provide guidance and training to school districts and schools in implementing and administering a data privacy and security plan, in responding to incidents involving the unauthorized disclosure of pupil data, and in complying with state and federal laws governing privacy and security of pupil data, including parental complaint procedures and other provisions of the federal Family Educational Rights and Privacy Act and the Wisconsin Pupil Records Law. The bill also requires the Superintendent to take certain steps to engage with members of the public and governmental officials regarding data privacy and security issues.

(on page 2) COMMENT: This provision, together with subsections (3) and (4), below, would require the department to provide guidance and training in implementing and administering a data privacy and security plan, in responding to incidents involving the unauthorized disclosure of pupil data, and in complying with state and federal laws governing privacy and security of pupil data. This would include providing services to charter schools and private schools participating in the choice program. Does this reflect the committee's intent?

*LRB-0445/P3 instructions: * p. 2 ln 5, 6-7 "provide guidance...in complying w/ state and federal privacy or security laws, including parental complaint procedures and other provisions of FERPA and S. 118.125 @"*

Thank you,
Katie

- p. 2, ln. 18 insert "school" before "s. do" (see p. 3 line 7 too)*
- p. 2, ln 19 replace "that chooses...sub a program" with "regarding incidents involving the unauthorized disclosure of pupil data."*
- p. 3, lines 12, line 6 ; p. 4 ln. 4 - insert "privacy and" after "data"*
- p. 3 lines 8-10 replace "and training...plan" with "on the implementation and administration of a data privacy and security plan to the extent the department has expertise."*
- p. 2, lines 17-23 replace all with "Procedures for data privacy and security"*



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0445/P3

TKK:jld

insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 11/8/16 wanted 11/9/16 a.m.

✓ Regen

1 AN ACT to create 115.285 of the statutes; relating to: responsibilities of state
2 superintendent related to privacy and security of pupil data.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

✓ Insert Note A

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding student data privacy. Specifically, the State Superintendent must ensure compliance with state and federal privacy laws, establish a privacy incident response program, develop certain processes or model processes regarding student data privacy, and take specified actions to engage with members of the public and governmental officials regarding student data privacy issues.

3 SECTION 1. 115.285 of the statutes is created to read:
4 **115.285 Privacy of pupil data. (1) DEFINITION.** In this section:
5 (a) "Parental choice program" means either or both of the programs under ss.
6 118.60 and 119.23.

1 (b) "Pupil data" means all of the following:

2 1. Information contained in education records, as defined in 34 CFR 99.3.

3 2. Information contained in pupil records, as defined in s. 118.125 (1) (d).

4 (2) COMPLIANCE WITH LAWS GOVERNING PRIVACY OF PUPIL DATA. The state

5 superintendent shall provide guidance and training to school districts and charter

6 schools in complying with s. 118.125, with the federal Family Educational Rights and *state and federal privacy or security laws, including parental complaint procedures and other provisions of*

7 Privacy Act, 20 USC 1232g, and with other state or federal privacy or security laws. *s. 118.125 ✓*

8 To the extent private schools participating in a parental choice program are required

9 to comply with these state and federal privacy and security laws, the state

10 superintendent shall provide the same guidance and training to these private

11 schools.

✓ Insert Note B

NOTE: This and similar provisions in subsections (3), (4), and (5), below, would require the department to provide services and support to school districts. In addition, the department would provide similar services and support to charter schools and private schools participating in the choice program, in certain cases. Does this adequately reflect the committee's intent?

12 (3) BREACH OF PRIVACY INCIDENT RESPONSE. The state superintendent shall do

13 all of the following:

14 (a) Establish and administer a program to respond to the unauthorized

15 disclosure of pupil data collected by the department and ensure that incidents

16 involving the unauthorized disclosure of pupil data are reported, investigated, and

17 mitigated, as appropriate.

18 (b) Provide guidance and training to a ^{school} school district, charter school, or private

19 school participating in a parental choice program that chooses to establish a breach *regarding incidents involving the*

20 of privacy incident response program on the implementation and administration of

21 such a program.

Unauthorized disclosure of pupil data

on the implementation and administration of a data privacy and security plan to the extent that the department has expertise

1 (4) DATA SECURITY PLAN. (a) The state superintendent shall work in
2 collaboration with the department of administration to develop all of the following:

3 1. A data security plan for the protection of pupil data collected by the
4 department. The state superintendent shall administer the plan prepared under
5 this subdivision.

6 2. A model data security plan for the protection of pupil data collected or
7 maintained by a school district, charter school, or private school participating in a

8 parental choice program. The state superintendent shall provide guidance and
9 training to a school district, charter school, or private school participating in a
10 parental choice program that chooses to implement a data security plan.

11 (b) The state superintendent shall include all of the following in each plan
12 required under this subsection:

13 1. Guidelines for access to pupil data and to the student information system
14 under s. 115.383 and the longitudinal data system of student information under s.
15 115.297, including guidelines for authentication of individuals authorized to access
16 pupil data and these pupil data systems.

17 2. Instructions for the conducting of annual security audits. The state
18 superintendent shall include, at minimum, the following instructions:

19 a. A private firm or a state agency with expertise in data security protocols shall
20 conduct the audit.

21 b. The entity selected to conduct the audit shall conduct an analysis of pupil
22 data security systems and protocols to identify inefficiencies, weaknesses, and
23 suitability of the systems and protocols to withstand a breach.

1 3. Procedures to be followed in the event of an unauthorized disclosure of pupil
2 data.

3 4. Data security training protocols and policies, including technical, physical,
4 and administrative safeguards against unauthorized access or disclosure.

5 5. Data retention and disposition policies.

6 6. A process for evaluating and updating the data[✓] security plan on at least an
7 annual basis. ✓ *privacy and*

8 **(5) BREACH OF PRIVACY COMPLAINT POLICY, GUIDANCE, AND TRAINING.** The state
9 superintendent shall develop a model breach of privacy complaint policy to govern
10 the filing of a complaint by a parent or guardian of a minor pupil or a pupil if the pupil
11 is an adult. The state superintendent shall ensure that the policy authorizes a
12 parent or guardian of a minor pupil, or a pupil if the pupil is an adult, to file a
13 complaint with the school district, charter school, or private school participating in
14 a parental choice program in the event of an alleged unauthorized disclosure of pupil
15 data or an inability to access pupil records maintained by the school district, charter
16 school, or private school. The state superintendent shall provide guidance and
17 training to a school district, charter school, or private school participating in a
18 parental choice program that chooses to adopt a breach of privacy complaint policy
19 in administering the policy.

20 **(5)** **(6)** **STAKEHOLDER ENGAGEMENT.** The state superintendent shall engage with
21 members of the public and governmental officials regarding the quality, usefulness,
22 openness, privacy, and security of pupil data. In collaboration with cooperative

1 educational service agencies, develop and promote best practices and policy
2 recommendations to ensure that pupil data practices and the use of technologies
3 sustain and enhance the privacy and security of pupil data.

4 (7) ESTIMATE OF PUPIL DATA IMPACT. The state superintendent shall prepare a
5 pupil data impact report for any bill introduced in either house of the legislature that
6 changes the type or specificity of pupil data collected by the department or that will
7 have an effect on the security of pupil data collected by the department. The state
8 superintendent shall include in the report a description of the changes to pupil data
9 or effect on the security of pupil data, including how that data will be affected, the
10 number of pupils whose data will be affected, the risks to pupil data security
11 associated with the action required under the bill, and any other information the
12 state superintendent considers relevant to the consideration of the bill. The state
13 superintendent shall submit the report required under this subsection to the
14 legislature under s. 13.172 (2) before any vote is taken on the bill by either house of
15 the legislature if the bill is not referred to a standing committee, or, if the bill is
16 referred to a standing committee, to the appropriate standing committee of the
17 legislature under s. 13.172 (3) before any public hearing is held before the standing
18 committee, or if no public hearing is held, before any vote is taken by the committee.
19 If a public hearing is held on the bill, the state superintendent or his or her designee
20 shall be present at the hearing to provide testimony about the report.

**2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0445/P3ins
TKK:jld

INSERT NOTE A

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding privacy and security of pupil data. The bill requires the Superintendent to provide guidance and training to school districts and schools in implementing and administering a data privacy and security plan, in responding to incidents involving the unauthorized disclosure of pupil data, and in complying with state and federal laws governing privacy and security of pupil data, including parental complaint procedures and other provisions of the federal Family Educational Rights and Privacy Act and the Wisconsin Pupil Records Law. The bill also requires the Superintendent to take certain steps to engage with members of the public and governmental officials regarding data privacy and security issues.

INSERT NOTE B

COMMENT: This provision, together with subsections (3) and (4) below, would require the department to provide guidance and training in implementing and administering a data privacy and security plan, in responding to incidents involving the unauthorized disclosure of pupil data, and in complying with state and federal laws governing privacy and security of pupil data. This would include providing services to charter schools and private schools participating in the choice program. Does this reflect the committee's intent?

Kuczenski, Tracy

From: Bender-Olson, Katie
Sent: Thursday, November 17, 2016 3:06 PM ✓
To: Kuczenski, Tracy; Knepp, Fern
Cc: Larson, Brian; Mautz, Kelly
Subject: School Data Study Committee Drafts - Requested Changes
Attachments: CMTEE REVISIONS to bill drafts 11-17-2016.docx

Tracy and Fern,

The School Data Study Committee met today and requested several changes to the bill drafts. I am attaching a Word Document that includes the changes (2 changes for LRB-0377/1 and 3 for LRB 0445/1).

Let me know if you have questions.

Thank you!
Katie

REVISION 1:

In LRB-0377/1, insert the following after "federal law," on page 2, line 7:

a citation to the specific provision or provisions of

REVISION 2:

In LRB-0377/1, insert the following before "or" on page 2, line 10:

, modifies its collection of a type of pupil data,

REVISION 3:

✓ **In LRB-0445/1, delete the language beginning on page 2, line 14, and ending on page 3, line 3.**

REVISION 4:

✓ **In LRB-0445/1, delete the language on page 3, lines 21 and 22, and replace with:**

3. Procedures to ensure that incidents involving the unauthorized disclosure of pupil data are reported to relevant stakeholders, investigated, and mitigated, as appropriate.

✓ **REVISION 5:**

In LRB-0445/1, delete the language on page 4, lines 6 to 11, and replace with:

The state superintendent shall engage with members of the public and governmental officials regarding the quality, usefulness, openness, privacy, and security of pupil data, and in collaboration with cooperative educational service agencies and other relevant stakeholders, develop and promote best practices regarding the quality, usefulness, openness, privacy, and security of pupil data.



State of Wisconsin
2017 - 2018 LEGISLATURE

2
LRB-0445/T
TKK:jld
RANK

2017 BILL

in 11/21 wanted 11/22

4

Regen

1 AN ACT *to create* 115.285 of the statutes; **relating to:** responsibilities of state
2 superintendent related to privacy and security of pupil data.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding privacy and security of pupil data. The bill requires the Superintendent to provide guidance and training to school districts and schools in implementing and administering a data privacy and security plan in responding to incidents involving the unauthorized disclosure of pupil data, and in complying with state and federal laws governing privacy and security of pupil data, including parental complaint procedures and other provisions of the federal Family Educational Rights and Privacy Act and the Wisconsin Pupil Records Law. The bill also requires the Superintendent to take certain steps to engage with members of the public and governmental officials regarding data privacy and security issues.

3 SECTION 1. 115.285^x of the statutes is created to read:

4 115.285 Privacy of pupil data. (1) DEFINITION. In this section:

BILL

1 (a) "Parental choice program" means either or both of the programs under ss.
2 118.60 and 119.23.

3 (b) "Pupil data" means all of the following:

4 1. Information contained in education records, as defined in 34 CFR 99.3.

5 2. Information contained in pupil records, as defined in s. 118.125 (1) (d).

6 (2) COMPLIANCE WITH LAWS GOVERNING PRIVACY OF PUPIL DATA. The state
7 superintendent shall provide guidance and training to school districts and charter
8 schools in complying with state and federal privacy or security laws, including
9 parental complaint procedures and other provisions of the federal Family
10 Educational Rights and Privacy Act, 20 USC 1232g, and s. 118.125. To the extent
11 private schools participating in a parental choice program are required to comply
12 with these state and federal privacy and security laws, the state superintendent
13 shall provide the same guidance and training to these private schools.

COMMENT: This provision, together with subsections (3) and (4), below, would
require the department to provide guidance and training in implementing and
administering a data privacy and security plan, in responding to incidents involving the
unauthorized disclosure of pupil data, and in complying with state and federal laws
governing privacy and security of pupil data. This would include providing services to
charter schools and private schools participating in the choice program. Does this reflect
the committee's intent?

14 (3) BREACH OF PRIVACY INCIDENT RESPONSE. The state superintendent shall do
15 all of the following:

16 (a) Establish and administer a program to respond to the unauthorized
17 disclosure of pupil data collected by the department and ensure that incidents
18 involving the unauthorized disclosure of pupil data are reported, investigated, and
19 mitigated, as appropriate.

BILL

1 (b) Provide guidance and training to a school, school district, charter school, or
2 private school participating in a parental choice program regarding incidents
3 involving the unauthorized disclosure of pupil data.

4 (3) (4) DATA PRIVACY AND SECURITY PLAN. (a) The state superintendent shall work
5 in collaboration with the department of administration to develop all of the following:

6 1. A data privacy and security plan for the protection of pupil data collected by
7 the department. The state superintendent shall administer the plan prepared under
8 this subdivision.

9 2. A model data privacy and security plan for the protection of pupil data
10 collected or maintained by a school, school district, charter school, or private school
11 participating in a parental choice program. The state superintendent shall provide
12 guidance on the implementation and administration of a data privacy and security
13 plan to the extent that the department has expertise.

14 (b) The state superintendent shall include all of the following in each plan
15 required under this subsection:

16 1. Guidelines for access to pupil data and to the student information system
17 under s. 115.383 and the longitudinal data system of student information under s.
18 115.297, including guidelines for authentication of individuals authorized to access
19 pupil data and these pupil data systems.

20 2. Procedures for data privacy and security audits.

21 3. Procedures to ~~be followed in the event of an~~ unauthorized disclosure of pupil
22 data.

*ensure that incidents involving the
are reported to relevant stakeholders, investigated, and mitigated,
as appropriate*

BILL

1 4. Data security training protocols and policies, including technical, physical,
2 and administrative safeguards against unauthorized access or disclosure.

3 5. Data retention and disposition policies.

4 6. A process for evaluating and updating the data privacy and security plan on
5 at least an annual basis.

6 (5) STAKEHOLDER ENGAGEMENT. The state superintendent shall engage with
7 members of the public and governmental officials regarding the quality, usefulness,

8 openness, privacy, and security of pupil data. In collaboration with cooperative
9 educational service agencies, ^{the state superintendent shall} develop and promote best practices and policy

10 recommendations to ensure that pupil data practices and the use of technologies

11 sustain and enhance the privacy and security of pupil data.

12 (END)

regarding the quality, usefulness, openness,

✓ and other relevant stakeholders

✓

6

(5) (4) (B)

9

recommendations to ensure that pupil data practices and the use of technologies sustain and enhance the privacy and security of pupil data.



State of Wisconsin
2017 - 2018 LEGISLATURE

0445/2
LRB-0445/2
TKK:jld
RMNR

2017 BILL

in 11/30
Today

1 AN ACT *to create* 115.285 of the statutes; **relating to:** responsibilities of state
2 superintendent related to privacy and security of pupil data.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on School Data. The bill establishes duties of the State Superintendent regarding privacy and security of pupil data. The bill requires the Superintendent to provide guidance and training to school districts and schools in implementing and administering a data privacy and security plan and in complying with state and federal laws governing privacy and security of pupil data, including parental complaint procedures and other provisions of the federal Family Educational Rights and Privacy Act and the Wisconsin Pupil Records Law. The bill also requires the Superintendent to take certain steps to engage with members of the public and governmental officials regarding data privacy and security issues.

3 SECTION 1. 115.285 of the statutes is created to read:

4 **115.285 Privacy of pupil data. (1) DEFINITION.** In this section:

BILL

1 (a) "Parental choice program" means either or both of the programs under ss.
2 118.60 and 119.23.

3 (b) "Pupil data" means all of the following:

4 1. Information contained in education records, as defined in 34 CFR 99.3.

5 2. Information contained in pupil records, as defined in s. 118.125 (1) (d).

6 **(2) COMPLIANCE WITH LAWS GOVERNING PRIVACY OF PUPIL DATA.** The state
7 superintendent shall provide guidance and training to school districts and charter
8 schools in complying with state and federal privacy or security laws, including
9 parental complaint procedures and other provisions of the federal Family
10 Educational Rights and Privacy Act, 20 USC 1232g, and s. 118.125. To the extent
11 private schools participating in a parental choice program are required to comply
12 with these state and federal privacy and security laws, the state superintendent
13 shall provide the same guidance and training to these private schools.

6e COMMENT: This provision, together with subsection (3), below, would require the department to provide guidance and training in implementing and administering a data privacy and security plan and in complying with state and federal laws governing privacy and security of pupil data. This would include providing services to charter schools and private schools participating in the choice program. Does this reflect the committee's intent?

14 **(3) DATA PRIVACY AND SECURITY PLAN.** (a) The state superintendent shall work
15 in collaboration with the department of administration to develop all of the following:

16 1. A data privacy and security plan for the protection of pupil data collected by
17 the department. The state superintendent shall administer the plan prepared under
18 this subdivision.

19 2. A model data privacy and security plan for the protection of pupil data
20 collected or maintained by a school, school district, charter school, or private school
21 participating in a parental choice program. The state superintendent shall provide

BILL

1 guidance on the implementation and administration of a data privacy and security
2 plan to the extent that the department has expertise.

3 (b) The state superintendent shall include all of the following in each plan
4 required under this subsection:

5 1. Guidelines for access to pupil data and to the student information system
6 under s. 115.383 and the longitudinal data system of student information under s.
7 115.297, including guidelines for authentication of individuals authorized to access
8 pupil data and these pupil data systems.

9 2. Procedures for data privacy and security audits.

10 3. Procedures to ensure that incidents involving the unauthorized disclosure
11 of pupil data are reported to relevant stakeholders, investigated, and mitigated, as
12 appropriate.

13 4. Data security training protocols and policies, including technical, physical,
14 and administrative safeguards against unauthorized access or disclosure.

15 5. Data retention and disposition policies.

16 6. A process for evaluating and updating the data privacy and security plan on
17 at least an annual basis.

18 (4) **STAKEHOLDER ENGAGEMENT.** The state superintendent shall engage with
19 members of the public and governmental officials regarding the quality, usefulness,
20 openness, privacy, and security of pupil data. In collaboration with cooperative
21 educational service agencies and other relevant stakeholders, the state

BILL

SECTION 1

1 superintendent shall develop and promote best practices regarding the quality,
2 usefulness, openness, privacy, and security of pupil data.

3 (END)

Milford, Renae

From: Larson, Brian
Sent: Thursday, February 02, 2017 4:27 PM
To: LRB.Legal
Subject: Draft Review: LRB -0445/2

Please Jacket LRB -0445/2 for the ASSEMBLY.