



## WISCONSIN LEGISLATIVE COUNCIL

### SCHOOL DATA

Legislative Council Conference Room  
One East Main Street, Suite 401  
Madison, WI

November 17, 2016  
10:00 a.m. – 2:30 p.m.

[The following is a summary of the November 17, 2016 meeting of the Study Committee on School Data. Visit <http://www.legis.wisconsin.gov/lc> to access links to the agenda, a video recording of the meeting on the Wisconsin Eye website, and copies of documents prepared for or submitted to the committee during the meeting.]

#### Call to Order and Roll Call

Chair Thiesfeldt called the committee to order and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Jeremy Thiesfeldt, Chair; Sen. Devin LeMahieu, Vice Chair; Rep. David Bowen; and Public Members Kevin Bruggink, Sally Flaschberger, Wendy Greenfield, Nicole Hafele, Kelly Hoyland, John Humphries, Kim Kaukl, Margaret Murphy, and Ann Steenwyk.

COMMITTEE MEMBERS EXCUSED: Reps. David Murphy and Sondy Pope; and Sen. Chris Larson, who appeared by phone.

COUNCIL STAFF PRESENT: Katie Bender-Olson and Brian Larson, Senior Staff Attorneys, Legislative Council Staff.

APPEARANCES: Jeff Pertl, Senior Policy Advisor, Department of Public Instruction (DPI).

**ATTENTION:** This was the final meeting of the Study Committee on School Data. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

## **Approval of the Minutes of the Committee's September 14, 2016 Meeting**

*Ms. Murphy moved, seconded by Ms. Hoyland, that the minutes of the committee's September 14, 2016 meeting be approved. The motion was approved by voice vote.*

## **DPI Comments Regarding the Bill Drafts and Recommendations**

Jeff Pertl, Senior Policy Advisor, DPI, addressed the committee and provided general comments regarding the bill drafts, LRB-0377/1 and LRB-0445/1, and the three recommendations. He explained current efforts by DPI related to privacy and security of student data and noted that DPI is comfortable supporting the bills and believes the agency can comply with most of the requirements imposed by the bill drafts within its existing resources. Mr. Pertl responded to committee member questions regarding implementation of "data backpacks" by school districts, the timeline for returning assessment results to schools and districts, DPI data retention and disposition policies, and outreach to stakeholders.

## **Committee Discussion of Bill Drafts and Recommendations**

Chair Thiesfeldt lead a series of discussions regarding the two bill drafts and three recommendations.

### **LRB-0377/1, relating to an inventory of pupil data**

Legislative Council staff explained the first bill draft, LRB-0377/1, relating to an inventory of pupil data, and the committee discussed potential revisions to the draft. Members discussed various wording changes and deletions, including requirements for DPI to update the inventory when the agency makes modifications to pupil data it collects and for more specific citations to state and federal laws. Staff memorialized the requested changes in order to generate revised language.

### **LRB-0445/1, relating to responsibilities of state superintendent related to privacy and security of pupil data**

Legislative Council staff then explained the second bill draft, LRB-0445/1, relating to responsibilities of the State Superintendent related to privacy and security of pupil data, and the committee discussed potential changes. The committee discussed revising the requirement for DPI to report unauthorized disclosures of pupil data, consolidating language related to data privacy and security plans and breach of privacy incident response programs, and revising the requirement for DPI to collaborate with relevant stakeholders regarding pupil data. Staff memorialized the requested changes in order to generate revised language.

### **Recommendation - Third-party vendor contracts**

Chair Thiesfeldt opened discussion regarding the recommendations by explaining that recommendations were being proposed for topics on which the committee did not have technical expertise or which were outside of the study committee scope. Legislative Council

staff then explained the recommendation language relating to contracts with third-party education technology vendors. Committee members discussed wording changes for the recommendation, including the addition of a requirement for DPI to create model terms of service and to create a list of vendors that offer terms of service that comply with the DPI model terms of service.

### **Recommendation – Electronic access**

Legislative Council staff explained the recommendation language relating to electronic access to student records. Committee members then discussed wording changes, including the addition of a reference to electronic transfer of records between schools, parents, and students.

### **Recommendation – Pupil data impact reports**

Chair Thiesfeldt initiated discussion of the final recommendation by explaining that fiscal estimates are currently required for legislation that has a fiscal impact and noted that a similar system of data impact reports could be developed for legislation that impacts sensitive, personal data held by state agencies. Chair Thiesfeldt explained that he decided to include data impact reports as a recommendation, rather than including it within a bill draft, because agencies other than DPI also hold sensitive data and that a uniform system applicable to all such agencies should be explored. Legislative Council staff then explained the recommendation language relating to pupil data impact reports. Committee members discussed wording changes, including use of the phrase “personally identifiable information.”

Following discussion of the recommendation regarding data impact reports, the committee discussed a potential fourth recommendation. Ms. Greenfield proposed an additional recommendation regarding return of assessment results to schools in a more timely manner so that the results may be used to shape instruction and practice. Committee members commented that public schools receive results of certain assessments in mid-summer, but that there may be a delay for private schools or for assessments provided by certain vendors. The committee also discussed whether the potential recommendation topic was sufficiently related to the scope of the Study Committee. Members decided not to move forward with an additional recommendation regarding the return of assessment results.

After concluding discussion on recommendations, Chair Thiesfeldt provided an overview of the “next steps” in the Legislative Council study committee process. Chair Thiesfeldt explained that if the Study Committee members approve LRB-0377/1 and LRB-0445/1 by mail ballot, the Joint Legislative Council will vote on whether to introduce the bill drafts during the upcoming legislative session. He noted that introduced bills go through the regular legislative process and may receive hearings and votes in the Assembly and Senate before being presented to the Governor.

The committee recessed for a lunch break while staff prepared revised language for the members to review in hard copy.

The committee reconvened after lunch and staff presented revised recommendation language regarding third-party vendor contracts, electronic access, and data impact reports to the members. The members then reviewed the revised recommendations prepared by staff and moved to approve **all three recommendations**, as follows:

*Ms. Murphy moved, seconded by Mr. Humphries, to approve the following recommendations:*

*The Joint Legislative Council Study Committee on School Data recommends that the Legislature consider requiring the State Superintendent of Public Instruction to develop guidance for school districts to use when evaluating and entering into contracts with third-party education technology vendors that have access to pupil data, including vendors that operate educational applications or online educational services or websites. The guidance shall include model terms of service and should identify issues for school districts to consider when evaluating a contract, such as, but not limited to: (a) whether the contract permits a vendor to sell student information to another person or entity; (b) whether the contract prohibits a vendor from amassing a marketing profile about a student; and (c) whether the contract permits a vendor to engage in targeted advertising to students or their parents or legal guardians. The guidance should also include a list of third-party education vendors that offer terms of service that comply with the State Superintendent's model terms of service.*

*The Joint Legislative Council Study Committee on School Data recommends that the Legislature consider options for encouraging or requiring the State Superintendent of Public Instruction to facilitate access to, and transfer of, electronic student records and data by schools, students, and parents. Such consideration should include reviewing measures adopted in other states to facilitate access to student records, including providing access to a "data backpack" of records maintained in electronic form on behalf of a student.*

*The Joint Legislative Council Study Committee on School Data recommends that the Legislature consider requiring agency personnel to prepare a personally identifiable information impact report for any bill or administrative rule impacting privacy or security of personally identifiable information collected by that agency. The report or reports should be distributed prior to a vote or hearing on the proposal, as is the case with a fiscal estimate under current law.*

*The committee members approved the language of the recommendations by a unanimous voice vote.*

Next, the committee members reviewed a summary of requested revisions to **LRB-0377/1** that was prepared by staff. The members moved to approve the draft, with the requested revisions, taking the following action:

*Mr. Kaukl moved, seconded by Ms. Flaschberger, to finalize LRB-0377/1, with the following changes: (1) require the inventory to include a citation to the specific provision*

*or provisions of state or federal law requiring DPI to collect that type of pupil data; and (2) require DPI to update the data inventory when the agency modifies its collect of a type of pupil data. The committee members approved the motion by a roll call vote of Ayes, 11 (Rep. Thiesfeldt; Sen. LeMahieu; and Public Members Bruggink, Flaschberger, Greenfield, Hafele, Hoyland, Humphries, Kaukl, Murphy, and Steenwyk); Noes, 0; and Absent, 4 (Reps. Bowen, Murphy, and Pope; and Sen. Larson).*

The committee members then reviewed a summary of requested revisions to **LRB-0445/1** that was prepared by staff. The members moved to approve the draft, with the requested revisions, taking the following action:

*Ms. Murphy moved, seconded by Mr. Bruggink, to finalize LRB-0445/1, with the following changes: (1) eliminate the statutory subsection entitled "Breach of Privacy Incident Response"; (2) require DPI to include within its Data Privacy and Security Plan procedures to ensure that incidents involving unauthorized disclosure of pupil data are reported to relevant stakeholders, investigated, and mitigated, as appropriate; and (3) amend the statutory subsection entitled "Stakeholder Engagement" to require DPI to collaborate with other relevant stakeholders, in addition to Cooperative Educational Service Agencies, to develop and promote best practices regarding the quality, usefulness, openness, privacy, and security of pupil data. The committee members approved the motion by a roll call vote of Ayes, 11 (Rep. Thiesfeldt; Sen. LeMahieu; and Public Members Bruggink, Flaschberger, Greenfield, Hafele, Hoyland, Humphries, Kaukl, Murphy, and Steenwyk); Noes, 0; and Absent, 4 (Reps. Bowen, Murphy, and Pope; and Sen. Larson).*

### **Other Business**

Chair Thiesfeldt thanked members for their service and efforts and complimented the collaborative nature of the study committee process. Committee members also thanked Chair Thiesfeldt and Legislative Council staff for their service and thanked DPI staff for their contributions.

Staff informed the committee that a mail ballot would likely be sent out in early December for members to approve the revised bill drafts.

### **Adjournment**

The meeting adjourned at 2:30 p.m.

KBO:ksm