

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 33

A bill to amend 1976 PA 451, entitled
"The revised school code,"
(MCL 380.1 to 380.1852) by adding section 1136.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1136. (1) TO PROTECT PUPIL PRIVACY, THE SUPERINTENDENT OF
2 PUBLIC INSTRUCTION SHALL ENSURE THAT THE DEPARTMENT COMPLIES WITH
3 ALL OF THE FOLLOWING AND THE STATE BUDGET DIRECTOR SHALL ENSURE
4 THAT CEPI COMPLIES WITH ALL OF THE FOLLOWING:

5 (A) THE DEPARTMENT OR CEPI SHALL NOT SELL ANY INFORMATION THAT
6 IS PART OF A PUPIL'S EDUCATION RECORDS.

7 (B) WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION,
8 THE DEPARTMENT AND CEPI EACH SHALL POST ON ITS WEBSITE A NOTICE OF
9 THE INFORMATION IT COLLECTS FOR A PUPIL'S EDUCATION RECORDS. THE

1 NOTICE SHALL INCLUDE AT LEAST AN INVENTORY OF ALL PUPIL DATA
2 ELEMENTS COLLECTED BY THE DEPARTMENT OR CEPI AND A DESCRIPTION OF
3 EACH PUPIL DATA ELEMENT.

4 (C) AT LEAST 30 DAYS BEFORE INITIATING THE COLLECTION OF ANY
5 PUPIL DATA ELEMENTS IN ADDITION TO THOSE ALREADY DISCLOSED IN THE
6 INVENTORY UNDER SUBDIVISION (B) , THE DEPARTMENT OR CEPI SHALL POST
7 ON ITS WEBSITE A NOTICE OF THE ADDITIONAL PUPIL DATA ELEMENTS IT IS
8 PROPOSING TO COLLECT AND AN EXPLANATION OF THE REASONS FOR THE
9 PROPOSAL.

10 (D) THE DEPARTMENT OR CEPI SHALL NOT DISCLOSE ANY INFORMATION
11 CONCERNING A PUPIL THAT IS COLLECTED OR CREATED BY THE DEPARTMENT
12 OR CEPI EXCEPT IN ACCORDANCE WITH A POLICY ADOPTED AND MADE
13 PUBLICLY AVAILABLE BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION OR
14 STATE BUDGET DIRECTOR, AS APPLICABLE, THAT CLEARLY STATES THE
15 CRITERIA FOR THE DISCLOSURE OF THE INFORMATION.

16 (E) THE DEPARTMENT OR CEPI SHALL ENSURE THAT ANY CONTRACT IT
17 HAS WITH A VENDOR THAT ALLOWS THE VENDOR ACCESS TO EDUCATION
18 RECORDS CONTAINS EXPRESS PROVISIONS REQUIRING THE VENDOR TO PROTECT
19 THE PRIVACY OF EDUCATION RECORDS AND PROVIDES EXPRESS PENALTIES FOR
20 NONCOMPLIANCE.

21 (F) IF THE DEPARTMENT OR CEPI PROVIDES ANY PERSONALLY
22 IDENTIFIABLE INFORMATION CONCERNING A PUPIL THAT IS COLLECTED OR
23 CREATED BY THE DEPARTMENT OR CEPI AS PART OF THE PUPIL'S EDUCATION
24 RECORDS TO ANY PERSON OTHER THAN THE SCHOOL DISTRICT, INTERMEDIATE
25 SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, AUTHORIZING BODY,
26 PRESCHOOL, OR POSTSECONDARY INSTITUTION IN WHICH THE PUPIL IS
27 CURRENTLY OR WAS FORMERLY ENROLLED, OR THE PUPIL'S PARENT OR LEGAL

1 GUARDIAN, THEN THE DEPARTMENT OR CEPI SHALL, IF THE PUPIL IS UNDER
2 18 YEARS OF AGE OR CLAIMED AS A DEPENDENT ON A PARENT'S OR LEGAL
3 GUARDIAN'S FEDERAL INCOME TAX RETURN, DISCLOSE TO THE PUPIL'S
4 PARENT OR LEGAL GUARDIAN UPON HIS OR HER WRITTEN REQUEST ALL OF THE
5 FOLLOWING:

6 (i) THE SPECIFIC DATA FIELDS THAT WERE DISCLOSED.

7 (ii) THE NAME AND CONTACT INFORMATION OF EACH PERSON, AGENCY,
8 OR ORGANIZATION TO WHICH THE INFORMATION HAS BEEN DISCLOSED.

9 (iii) THE REASON FOR THE DISCLOSURE.

10 (G) THE DEPARTMENT OR CEPI SHALL DISCLOSE THE INFORMATION
11 UNDER SUBDIVISION (F) WITHIN 30 DAYS AFTER RECEIVING THE WRITTEN
12 REQUEST AND WITHOUT CHARGE TO THE PARENT OR LEGAL GUARDIAN. IF THE
13 DEPARTMENT OR CEPI CONSIDERS IT NECESSARY TO MAKE REDACTED COPIES
14 OF ALL OR PART OF A PUPIL'S EDUCATION RECORDS IN ORDER TO PROTECT
15 PERSONALLY IDENTIFIABLE INFORMATION OF ANOTHER PUPIL, THE
16 DEPARTMENT OR CEPI SHALL NOT CHARGE THE PARENT OR LEGAL GUARDIAN
17 FOR THE COST OF MAKING THOSE COPIES.

18 (2) TO PROTECT PUPIL PRIVACY, THE BOARD OF A SCHOOL DISTRICT
19 OR INTERMEDIATE SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC
20 SCHOOL ACADEMY SHALL ENSURE THAT THE SCHOOL DISTRICT, INTERMEDIATE
21 SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY COMPLIES WITH ALL OF THE
22 FOLLOWING, AND THE GOVERNING BOARD OF AN AUTHORIZING BODY SHALL
23 ENSURE THAT THE AUTHORIZING BODY COMPLIES WITH ALL OF THE
24 FOLLOWING:

25 (A) A SCHOOL DISTRICT, AN INTERMEDIATE SCHOOL DISTRICT, A
26 PUBLIC SCHOOL ACADEMY, AN EDUCATIONAL MANAGEMENT ORGANIZATION, OR
27 AN AUTHORIZING BODY SHALL NOT SELL OR OTHERWISE PROVIDE TO A FOR-

1 PROFIT BUSINESS ENTITY ANY PERSONALLY IDENTIFIABLE INFORMATION THAT
2 IS PART OF A PUPIL'S EDUCATION RECORDS. THIS SUBDIVISION DOES NOT
3 APPLY TO ANY OF THE FOLLOWING SITUATIONS:

4 (i) FOR A PUPIL ENROLLED IN A PUBLIC SCHOOL ACADEMY, IF THE
5 PUBLIC SCHOOL ACADEMY HAS A MANAGEMENT AGREEMENT WITH AN
6 EDUCATIONAL MANAGEMENT ORGANIZATION, THE PUBLIC SCHOOL ACADEMY
7 PROVIDING THE INFORMATION TO THAT EDUCATIONAL MANAGEMENT
8 ORGANIZATION.

9 (ii) PROVIDING THE INFORMATION AS NECESSARY FOR STANDARDIZED
10 TESTING THAT MEASURES THE PUPIL'S ACADEMIC PROGRESS AND
11 ACHIEVEMENT.

12 (iii) PROVIDING THE INFORMATION AS NECESSARY TO A PERSON THAT
13 IS PROVIDING EDUCATIONAL OR EDUCATIONAL SUPPORT SERVICES TO THE
14 PUPIL UNDER A CONTRACT WITH THE SCHOOL DISTRICT, INTERMEDIATE
15 SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR EDUCATIONAL MANAGEMENT
16 ORGANIZATION.

17 (B) UPON WRITTEN REQUEST BY A PUPIL'S PARENT OR LEGAL
18 GUARDIAN, A SCHOOL DISTRICT, AN INTERMEDIATE SCHOOL DISTRICT, A
19 PUBLIC SCHOOL ACADEMY, OR AN AUTHORIZING BODY SHALL DISCLOSE TO THE
20 PARENT OR LEGAL GUARDIAN ANY PERSONALLY IDENTIFIABLE INFORMATION
21 CONCERNING THE PUPIL THAT IS COLLECTED OR CREATED BY THE SCHOOL
22 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR
23 AUTHORIZING BODY AS PART OF THE PUPIL'S EDUCATION RECORDS.

24 (C) SUBJECT TO THE EXEMPTIONS UNDER SUBSECTION (3), IF A
25 SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL
26 ACADEMY, OR AUTHORIZING BODY PROVIDES ANY INFORMATION DESCRIBED IN
27 SUBDIVISION (B) TO ANY PERSON, AGENCY, OR ORGANIZATION, THEN THE

1 SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL
2 ACADEMY, OR AUTHORIZING BODY SHALL DISCLOSE TO THE PUPIL'S PARENT
3 OR LEGAL GUARDIAN UPON HIS OR HER WRITTEN REQUEST ALL OF THE
4 FOLLOWING:

5 (i) THE SPECIFIC INFORMATION THAT WAS DISCLOSED.

6 (ii) THE NAME AND CONTACT INFORMATION OF EACH PERSON, AGENCY,
7 OR ORGANIZATION TO WHICH THE INFORMATION HAS BEEN DISCLOSED.

8 (iii) THE LEGITIMATE REASON THAT THE PERSON, AGENCY, OR
9 ORGANIZATION HAD IN OBTAINING THE INFORMATION.

10 (D) A SCHOOL DISTRICT, AN INTERMEDIATE SCHOOL DISTRICT, A
11 PUBLIC SCHOOL ACADEMY, OR AN AUTHORIZING BODY SHALL DISCLOSE THE
12 INFORMATION UNDER SUBDIVISIONS (B) AND (C) WITHIN 30 DAYS AFTER
13 RECEIVING THE WRITTEN REQUEST AND WITHOUT CHARGE TO THE PARENT OR
14 LEGAL GUARDIAN. IF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL
15 DISTRICT, PUBLIC SCHOOL ACADEMY, OR AUTHORIZING BODY CONSIDERS IT
16 NECESSARY TO MAKE REDACTED COPIES OF ALL OR PART OF A PUPIL'S
17 EDUCATION RECORDS IN ORDER TO PROTECT PERSONALLY IDENTIFIABLE
18 INFORMATION OF ANOTHER PUPIL, THE SCHOOL DISTRICT, INTERMEDIATE
19 SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR AUTHORIZING BODY SHALL
20 NOT CHARGE THE PARENT OR LEGAL GUARDIAN FOR THE COST OF THOSE
21 COPIES.

22 (3) SUBSECTION (2) (C) DOES NOT APPLY TO ANY OF THE FOLLOWING
23 SITUATIONS:

24 (A) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC
25 SCHOOL ACADEMY, OR AUTHORIZING BODY PROVIDING THE INFORMATION TO
26 THE DEPARTMENT OR CEPI.

27 (B) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC

1 SCHOOL ACADEMY, OR AUTHORIZING BODY PROVIDING THE INFORMATION TO
2 THE PUPIL'S PARENT OR LEGAL GUARDIAN.

3 (C) A PUBLIC SCHOOL ACADEMY PROVIDING THE INFORMATION TO ITS
4 AUTHORIZING BODY OR TO AN EDUCATIONAL MANAGEMENT ORGANIZATION WITH
5 WHICH IT HAS A MANAGEMENT AGREEMENT.

6 (D) A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY PROVIDING THE
7 INFORMATION TO ITS INTERMEDIATE SCHOOL DISTRICT OR TO ANOTHER
8 INTERMEDIATE SCHOOL DISTRICT PROVIDING SERVICES TO THE SCHOOL
9 DISTRICT OR PUBLIC SCHOOL ACADEMY OR ITS PUPILS PURSUANT TO A
10 WRITTEN AGREEMENT.

11 (E) AN INTERMEDIATE SCHOOL DISTRICT PROVIDING THE INFORMATION
12 TO A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY IN WHICH THE PUPIL IS
13 ENROLLED OR TO A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY FOR WHICH
14 THE INTERMEDIATE SCHOOL DISTRICT IS PROVIDING SERVICES PURSUANT TO
15 A WRITTEN AGREEMENT.

16 (F) AN AUTHORIZING BODY PROVIDING THE INFORMATION TO A PUBLIC
17 SCHOOL ACADEMY IN WHICH THE PUPIL IS ENROLLED.

18 (G) PROVIDING THE INFORMATION TO A PERSON, AGENCY, OR
19 ORGANIZATION WITH WRITTEN CONSENT FROM THE PUPIL'S PARENT OR LEGAL
20 GUARDIAN OR, IF THE PUPIL IS AT LEAST AGE 18, THE PUPIL.

21 (H) PROVIDING THE INFORMATION TO A PERSON, AGENCY, OR
22 ORGANIZATION SEEKING OR RECEIVING RECORDS IN ACCORDANCE WITH AN
23 ORDER, SUBPOENA, OR EX PARTE ORDER ISSUED BY A COURT OF COMPETENT
24 JURISDICTION.

25 (I) PROVIDING THE INFORMATION AS NECESSARY FOR STANDARDIZED
26 TESTING THAT MEASURES THE PUPIL'S ACADEMIC PROGRESS AND
27 ACHIEVEMENT.

1 (J) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC
2 SCHOOL ACADEMY, OR AUTHORIZING BODY PROVIDING INFORMATION THAT IS
3 COVERED BY THE OPT-OUT FORM DESCRIBED IN SUBSECTION (6), UNLESS THE
4 PUPIL'S PARENT OR LEGAL GUARDIAN OR, IF THE PUPIL IS AT LEAST AGE
5 18 OR IS AN EMANCIPATED MINOR, THE PUPIL HAS SIGNED AND SUBMITTED
6 THE OPT-OUT FORM UNDER SUBSECTION (6) (D).

7 (4) IF AN EDUCATIONAL MANAGEMENT ORGANIZATION RECEIVES
8 INFORMATION THAT IS PART OF A PUPIL'S EDUCATION RECORDS FROM ANY
9 SOURCE AS PERMITTED UNDER THIS SECTION, THE EDUCATIONAL MANAGEMENT
10 ORGANIZATION SHALL NOT SELL OR OTHERWISE PROVIDE THE INFORMATION TO
11 ANY OTHER PERSON EXCEPT AS PROVIDED UNDER THIS SECTION.

12 (5) IN ADDITION TO ENSURING COMPLIANCE WITH SUBSECTION (1),
13 THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL ENSURE THAT THE
14 DEPARTMENT, AND THE STATE BUDGET DIRECTOR SHALL ENSURE THAT CEPI,
15 COMPLIES WITH ALL OTHER APPLICABLE PRIVACY LAW.

16 (6) FOR THE PURPOSES OF THIS SECTION, EACH SCHOOL DISTRICT,
17 INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR AUTHORIZING
18 BODY SHALL DO ALL OF THE FOLLOWING:

19 (A) DEVELOP A LIST OF USES FOR WHICH THE SCHOOL DISTRICT,
20 INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR AUTHORIZING
21 BODY COMMONLY WOULD DISCLOSE A PUPIL'S DIRECTORY INFORMATION.

22 (B) DEVELOP AN OPT-OUT FORM THAT LISTS ALL OF THE USES OR
23 INSTANCES UNDER SUBDIVISION (A) AND ALLOWS A PARENT OR LEGAL
24 GUARDIAN TO ELECT NOT TO HAVE HIS OR HER CHILD'S DIRECTORY
25 INFORMATION DISCLOSED FOR 1 OR MORE OF THESE USES.

26 (C) PRESENT THE OPT-OUT FORM UNDER SUBDIVISION (B) TO EACH
27 PUPIL'S PARENT OR LEGAL GUARDIAN WITHIN THE FIRST 30 DAYS OF THE

1 SCHOOL YEAR. A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
2 PUBLIC SCHOOL ACADEMY, OR AUTHORIZING BODY ALSO SHALL MAKE THE FORM
3 AVAILABLE TO A PARENT OR LEGAL GUARDIAN AT OTHER TIMES UPON
4 REQUEST.

5 (D) IF AN OPT-OUT FORM UNDER SUBDIVISION (B) IS SIGNED AND
6 SUBMITTED TO THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
7 PUBLIC SCHOOL ACADEMY, OR AUTHORIZING BODY BY A PUPIL'S PARENT OR
8 LEGAL GUARDIAN, THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,
9 PUBLIC SCHOOL ACADEMY, OR AUTHORIZING BODY SHALL NOT INCLUDE THE
10 PUPIL'S DIRECTORY INFORMATION IN ANY OF THE USES THAT HAVE BEEN
11 OPTED OUT OF IN THE OPT-OUT FORM.

12 (7) IF A PUPIL IS AT LEAST AGE 18 OR IS AN EMANCIPATED MINOR,
13 THE PUPIL MAY ACT ON HIS OR HER OWN BEHALF UNDER SUBSECTION (6).

14 (8) AS USED IN THIS SECTION:

15 (A) "AUTHORIZING BODY" MEANS THAT TERM AS DEFINED IN PART 6A,
16 6C, OR 6E OR SECTION 1311B, AS APPLICABLE.

17 (B) "CEPI" MEANS THE CENTER FOR EDUCATIONAL PERFORMANCE AND
18 INFORMATION CREATED UNDER SECTION 94A OF THE STATE SCHOOL AID ACT
19 OF 1979, MCL 388.1694A.

20 (C) "DIRECTORY INFORMATION" MEANS THAT TERM AS DEFINED IN 34
21 CFR 99.3.

22 (D) "EDUCATION RECORDS" MEANS THAT TERM AS DEFINED IN 34 CFR
23 99.3.

24 (E) "EDUCATIONAL MANAGEMENT ORGANIZATION" MEANS THAT TERM AS
25 DEFINED IN SECTION 503C, 523C, OR 553C, AS APPLICABLE.

26 (F) "MANAGEMENT AGREEMENT" MEANS THAT TERM AS DEFINED IN
27 SECTION 503C, 523C, OR 553C, AS APPLICABLE.

1 (G) "PERSONALLY IDENTIFIABLE INFORMATION" MEANS THAT TERM AS
2 DEFINED IN 34 CFR 99.3.

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.