

# Legislative Analysis

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## PUPIL PRIVACY PROTECTIONS

Phone: (517) 373-8080  
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**Senate Bill 33 (H-2) as reported from committee**

**Sponsor: Sen. Phil Pavlov**

**House Committee: Education**

**Senate Committee: Education**

**Complete to 12-7-16**

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 367 of 2016)*

**BRIEF SUMMARY:** Senate Bill 33 would add Section 1136 to the Revised School Code to ensure that statewide agencies and schools are strictly limited in disclosing pupil information; that if they do so, they disclose as much to the pupil and parent or guardian; and specify that certain information does not fall under this prohibition. Also, in order to prevent the application of this protection to generic "directory information," schools must develop an opt-out form, which parents must sign and return if they do not wish to have their child's directory information released.

**FISCAL IMPACT:** Senate Bill 33 would create additional administrative costs related to the protection and transparency of student data elements for the State as well as school districts, public school academies, and intermediate school districts.

The bill could add to the administrative and staffing costs for MDE and CEPI by requiring them to post all current and future student data online with descriptions, to review current and future contracts covering student data and ensure compliance with the statute, and to create a formalized request process for parents and legal guardians concerning their children's education data and respond within 30 days of the request. While CEPI already fulfills such requests under federal requirements, there is no formalized process or required response time, so the addition of both could require that additional resources be dedicated to responding to requests.

The bill could also increase administrative costs for districts, intermediate districts, and public school academies in having to review current and future contracts covering student data to ensure compliance with the statute and creating both a formal request process and an opt-out process for parents and legal guardians concerning their children's education data with a 30-day response time.

## **THE CONTENT OF THE BILL:**

Senate Bill 33 would add Section 1136 to the Revised School Code to ensure that statewide agencies and schools are strictly limited in disclosing pupil information; that if they do so, they disclose as much to the pupil and parent or guardian; and specify that certain information does not fall under this prohibition. Also, in order to prevent the application of this protection to generic "directory information," schools must develop an opt-out form, which parents must sign and return if they do not wish to have their child's directory information released.

**Key terms** (as defined in the Code of Federal Regulations, 34 CFR 99.3)

***Directory information*** means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name; address; telephone listing; e-mail address; photograph; date of birth; major field of study; grade level; enrollment status; dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended. Directory information does not include a student's social security number, and may include a student identification number, depending on what information may be accessed with that number.

(See: <https://www.law.cornell.edu/cfr/text/34/99.3>).

***Education records*** applies to records that are (1) directly related to the student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. Certain records are excepted from this designation.

***Personally identifiable information*** includes, but is not limited to, the student's name, address, social security number, student number or date of birth, the name or address of the student's family members, or other information linkable to a specific student.

### **Rules for Michigan Department of Education and CEPI**

In order to protect pupil privacy, the bill would require the State Board of Education and State Budget Director to ensure that the Michigan Department of Education (MDE) and the Center for Educational Performance and Information (CEPI), respectively, comply with all of the following:

- Not sell any information that is part of a pupil's education records.
- Post a notice listing the information they collect for a pupil's education records on their websites within 30 days after the effective date of this bill. The notice must at least include an inventory of all pupil data elements collected by the MDE and CEPI and a description of each pupil data element.
- Post notice if they propose to add any pupil data elements to those collected, and their rationale for doing so, at least 30 days before initiating the collection.
- Not disclose any information concerning a pupil that is collected by the MDE or CEPI except in accordance with a policy adopted and made publicly available by the state superintendent of public instruction or state budget director, as applicable, that clearly states the criteria for the disclosure of the information.

- Ensure that any contract it has with a vendor, allowing the vendor access to education records, expressly require the vendor to protect the privacy of education records and provide express penalties for noncompliance.
- Upon written request by the pupil's parent or guardian, notify the parent or guardian of any disclosure of protected information to any unauthorized party. In other words, disclosure to anyone other than the following is a violation: the school district, intermediate school district (ISD), public school academy (charter school), authorizing body, preschool, or postsecondary institution in which the pupil is currently or was formerly enrolled, or the pupil's parent or legal guardian. Protected information, the disclosure of which would be a violation, includes any personally identifiable information concerning a pupil that is collected or created by the MDE or CEPI as part of the pupil's education records. If such a violation occurs, the MDE or CEPI must notify the parent or guardian all of the following:
  - The specific data fields that were disclosed;
  - The name and contact information of each person, agency, or organization to which the information has been disclosed; and
  - The reason for the disclosure.
- Disclose the above listed information about any violation to the parent or guardian within 30 days of receiving the written request, and without charge to the parent or guardian. If the MDE or CEPI considers it necessary to produce redacted copies of the pupil's education records in order to protect another pupil's information, the parent or guardian will not be charged for the cost of making those copies.

### **Rules for Schools**

The board of a school district or ISD or board of directors of a charter school must ensure that its schools comply with all of the following, and the governing board of an authorizing body shall ensure that the authorizing body complies with all of the following:

- Not sell or otherwise provide a for-profit business entity with any personally identifiable information that is part of a pupil's education records.
  - The above prohibition also applies to an educational management organization (EMO), except that, if the pupil is enrolled in a charter school and the charter school has a management contract with an EMO, the EMO may receive this information.
  - This prohibition does not apply to information provided for standardized testing or participating in educational support services with a contracted entity.
- Disclose to the pupil's parent or guardian the personally identifiable information collected or gathered by the school district, IDS, charter school or authorizing body as part of the pupil's education records, upon written request by the parent or guardian.

- Upon written request by the pupil's parent or guardian, notify the parent or guardian of any disclosure of personally identifiable information to any person, agency, or organization, except in the instances listed in **allowable disclosures**, below. If such a violation occurs, the MDE or CEPI must notify the parent or guardian all of the following:
  - The specific information that was disclosed;
  - The name and contact information of each person, agency, or organization to which the information has been disclosed; and
  - The legitimate reason that the person, agency, or organization had in obtaining the information.
- Disclose the above listed information about any violation to the parent or guardian within 30 days of receiving the written request, and without charge to the parent or guardian. If the school district, ISD, charter school, or authorizing body considers it necessary to produce redacted copies of the pupil's education records in order to protect another pupil's information, the parent or guardian will not be charged for the cost of making those copies.

#### **Allowable disclosures**

The prohibition on a school disclosing personally identifiable information to a person, agency or organization does not apply when the school is providing information to the following:

- MDE or CEPI;
- The pupil's parent or guardian;
- Its authorizing body or EMO with which it has a management agreement, in the case of a PSA;
- Its respective ISD or another ISD providing services to the district or ISD, in the case of a school district or PSA;
- The school district or PSA in which the pupil is enrolled or to a district or PSA for which the ISD is providing services, from its respective ISD;
- The charter school in which the student is enrolled, from its authorizing body;
- A person, agency, or organization with written consent from the pupil's parent or guardian or, if the pupil is at least age 18, the pupil;
- A person, agency, or organization seeking or receiving records in compliance with an order, subpoena, or ex parte order issued by a court of competent jurisdiction; or
- As necessary for standardized testing; and
- As covered by the opt-out form described below.

#### **Opt-out form for directory information**

In response to concerns expressed by committee members that these protections would be overly broad, an opt-out form provision was added: a parent or guardian would be able to sign an opt-out form to prevent the disclosure of any information about their child, or the student may sign if the student is at least age 18 or an emancipated minor. If a parent or guardian or eligible student chooses not to sign the form, the school is able to release

directory information about the student. The concern was that failure to include this exception for directory information would mean that a school could not produce a yearbook, playbill, team roster, or class phone list, because it would be providing information such as a student's name and age.

Specifically, the opt-out provision would require each school, ISD, charter school, or authorizing body to develop a list of uses for which directory information would commonly be used, develop and provide to parents and guardians an opt-out form listing those uses, and allow each parent or guardian or eligible student to sign that form, thus opting the child out of release of that information, within the first 30 days of the school year. The form would also be available to a parent or guardian upon request. If the parent or guardian signs and returns the opt-out form, the school may not use that student's directory information described on the form.

In addition to ensuring that the MDE and CEPI comply with the rules listed above, the state superintendent of public instruction and the State Budget Director, respectively, must ensure that those entities comply with all other applicable privacy law.

Senate Bill 33 would take effect 90 days after enactment.

#### ***HOUSE COMMITTEE ACTION:***

In the H-2 substitute for Senate Bill 33, the House Education Committee added the concept of an opt-out form, described above.

#### ***POSITIONS:***

Education Trust Midwest supports the bill. (1-28-16)

Barry, Branch, Calhoun, Jackson, Lenawee and Monroe ISDs support the bill. (11-10-16)

A representative of the Michigan Association of Secondary School Principals testified in opposition to the bill. (1-28-16)

Stop Common Core in Michigan opposes the bill. (11-10-16)

Legislative Analyst: Jenny McInerney  
Fiscal Analyst: Bethany Wicksall  
Samuel Christensen

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.