

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 STATE BOARD SHALL  
2        ENSURE THAT THE DEPARTMENT COMPLIES WITH ALL OF THE FOLLOWING AND  
3        THE STATE BUDGET DIRECTOR SHALL ENSURE THAT CEPI COMPLIES WITH ALL  
4        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 STATE BOARD OR STATE BUDGET DIRECTOR, AS  
14 APPLICABLE, THAT CLEARLY STATES THE CRITERIA FOR THE DISCLOSURE OF  
15 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 AN INDIVIDUAL OR  
13 ENTITY THAT IS PROVIDING EDUCATIONAL OR EDUCATIONAL SUPPORT  
14 SERVICES TO THE PUPIL UNDER A CONTRACT WITH THE SCHOOL DISTRICT,  
15 INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR EDUCATIONAL  
16 MANAGEMENT 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 PROVIDING THE INFORMATION TO ITS  
7 INTERMEDIATE SCHOOL DISTRICT.

8 (E) AN INTERMEDIATE SCHOOL DISTRICT PROVIDING THE INFORMATION  
9 TO A SCHOOL DISTRICT IN WHICH THE PUPIL IS ENROLLED.

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

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

15 (H) PROVIDING THE INFORMATION TO A PERSON, AGENCY, OR  
16 ORGANIZATION SEEKING OR RECEIVING RECORDS IN ACCORDANCE WITH AN  
17 ORDER, SUBPOENA, OR EX PARTE ORDER ISSUED BY A COURT OF COMPETENT  
18 JURISDICTION.

19 (I) PROVIDING THE INFORMATION AS NECESSARY FOR STANDARDIZED  
20 TESTING THAT MEASURES THE PUPIL'S ACADEMIC PROGRESS AND  
21 ACHIEVEMENT.

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

27 (5) IN ADDITION TO ENSURING COMPLIANCE WITH SUBSECTION (1),

1 THE STATE BOARD SHALL ENSURE THAT THE DEPARTMENT, AND THE STATE  
2 BUDGET DIRECTOR SHALL ENSURE THAT CEPI, COMPLIES WITH ALL OTHER  
3 APPLICABLE PRIVACY LAW.

4 (6) AS USED IN THIS SECTION:

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

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

10 (C) "EDUCATION RECORDS" MEANS THAT TERM AS DEFINED IN 34 CFR  
11 99.3.

12 (D) "EDUCATIONAL MANAGEMENT ORGANIZATION" MEANS THAT TERM AS  
13 DEFINED IN SECTION 503C, 523C, OR 553C, AS APPLICABLE.

14 (E) "MANAGEMENT AGREEMENT" MEANS THAT TERM AS DEFINED IN  
15 SECTION 503C, 523C, OR 553C, AS APPLICABLE.

16 (F) "PERSONALLY IDENTIFIABLE INFORMATION" MEANS THAT TERM AS  
17 DEFINED IN 34 CFR 99.3.

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