SPONSOR: Sen. Sturgeon & Rep. K. Williams
Sen. Walsh; Rep. Parker Selby

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 292
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO DISCLOSURE OF PUPILS' SCHOOL RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4111, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4111. Disclosure of pupils' school records.

(a) Educational records of students in all public and private schools in this State are deemed to be confidential. Educational records may be released, and personally identifiable information contained therein disclosed, only in accordance with ~~rules and regulations of the Department of Education.~~ the Family Educational Rights and Privacy Act ("FERPA") under 20 U.S.C. § 1232g and its implementing regulations set forth in 34 CFR Part 99 and, with respect to records for students with disabilities, in accordance with Chapter 31 of Title 14 ("Chapter 31") and its implementing regulations. ~~Such rules and regulations~~ FERPA and Chapter 31 and their implementing regulations ~~shall~~ authorize the release of educational records upon written consent and ~~shall~~ establish the other terms and conditions on which educational records may and must be released.

(b) The provisions of subsection (a) of this section ~~notwithstanding,~~ notwithstanding:

(1) ~~educational~~ Educational institutions and programs operating in this State, including local education agencies and postsecondary institutions and programs regulated by a state agency, shall disclose to the Department such education records, and personally identifiable information contained therein, necessary for the audit or evaluation of state and federal education programs in accordance with the ~~terms and conditions of a written agreement negotiated between the Department and each educational institution or program from which education records are sought. Such agreements shall:~~ provisions of FERPA and its implementing regulations.

~~(1) State the term of the agreement;~~

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~~(2) Comply with the requirements of the Family Educational Rights and Privacy Act Regulations set forth in 34 CFR Part 99 regarding the Department's use, compilation, maintenance, protection, distribution, re-disclosure and return/destruction of education records obtained hereunder;~~

~~(3) Specify the data elements to be disclosed by the educational institution or program;~~

~~(4) State the purpose for which the information will be used;~~

~~(5) Prohibit any disclosure of education records or personally identifiable information contained therein by an educational institution or program in violation of applicable state or federal privacy laws;~~

~~(6) Prohibit any modification or amendment except by written agreement duly executed by the parties; and~~

~~(7) Contain such additional provisions as agreed upon.~~

(2) Pursuant to the legitimate interest in data exchange and compliance with federal and state reporting requirements, educational institutions and programs operating in this State, including local education agencies and postsecondary institutions and programs regulated by a state agency who outsource data exchange and compliance with federal and state reporting requirements to the Department, may consider the Department to be a school official as defined under FERPA's implementing regulations in 34 CFR Part 99.31. Local education agencies and other educational institutions and programs may disclose to the Department, without parental consent, the educational records, and personally identifiable information contained therein, necessary for the purpose of data exchange and federal and state reporting as required by law, if all of the following conditions are met:

a. The educational institution or program would otherwise use its own employees to collect the data for the purpose of the reporting.

b. The educational institution or program directly controls the Department's use and maintenance of its educational records.

c, The Department is subject to the requirements of FERPA and its implementing regulations governing the use and redisclosure of personally identifiable information from educational records.

d. The education agency or institution uses reasonable methods to ensure that the Department only obtains access to those educational records that are necessary for the legitimate educational interest of data exchange and federal or state reporting as required by law.

(3) All disclosures ~~required~~ authorized by this section ~~shall~~ must be for the purpose of ensuring the effectiveness of publicly-funded programs by connecting pre-kindergarten through grade 12 and post-secondary data, and sharing information to improve ~~early childhood and workforce programs as set forth in Delaware's State Fiscal~~

~~Stabilization Plan and Delaware's Race to the Top Plan, or as otherwise approved by the P-20 Council.~~ educational outcomes for students.

(4) The Department may redisclose those educational records, and the personally identifiable information contained therein, deemed necessary by the Department to accomplish its objective of improving educational outcomes. Any Department use, compilation, maintenance, protection, distribution, redisclosure, or destruction of educational records, and the personally identifiable information contained therein, must comply with FERPA and its implementing regulations as well as any other pertinent federal or state privacy statutes.

(c) All public and private schools in this State shall allow parents and eligible students to inspect and review the education records of their children or themselves who are, or have been, in attendance at the school. The right to inspect and review educational records ~~shall~~ must be in accordance with rules and regulations of the Department of Education.

(d) No cause of action or claim for relief, civil or criminal, ~~shall~~ may lie or damages be recoverable against any school officer or employee by reason of such officer's or employee's participation in the formulation of such records or any statements made or of judgments expressed therein concerning a student's academic performance, personal conduct, health, habits, school related activities or potential; nor by reason of the disclosure of the records or personally identifiable information from the records, nor lack of access thereto, in accordance with subsections (a) through (c) of this section.