

**STORAGE NAME:** h0633.ei

**DATE:** February 3, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
EDUCATION INNOVATION  
ANALYSIS**

**BILL #:** HB 633

**RELATING TO:** Student Records Release

**SPONSOR(S):** Representative Alexander

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) EDUCATION INNOVATION
  - (2) GOVERNMENTAL OPERATIONS
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 633 authorizes the release of personally identifiable student records to the Department of Highway Safety and Motor Vehicles for purposes of the compulsory attendance driver's license eligibility requirements and to the Department of Children and Family Services for purposes of the Learnfare program compulsory attendance requirements.

HB 633 sets different parameters for the release of *directory information* to school districts and K-12 educational institutions and non-K-12 educational institutions. It provides that no *school district or K-12 educational institution* may release *directory information unless the school district or K-12 educational institution has received the prior written consent of the student's parent or guardian*. Requiring the prior written authorization of parents before releasing directory information each time prevents school districts and schools from releasing directory information after a public notice and allowing a time period for the parent to inform the institution in writing that any or all of the information should not be released.

The bill will change the process for a school or school district to release information for purposes of publishing of school honor rolls in the local newspaper, provision of athlete information to the media, and the release of student names and addresses to companies providing student pictures, class rings, and school uniforms. The bill prohibits the release of directory information by school districts or K-12 educational institutions without written parental consent.

The Department of Education bill analysis for HB 633 states: "The requirement to obtain prior written authorization from parents will require additional resources: staff, time, and distribution of forms; thus having a fiscal impact." However, the current requirement is to publicly notice and allow a time period for parents to respond. Although the process is changed, staff, time and distribution of forms is required in both instances.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. <u>Family Empowerment</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Florida Law**

The purpose of s. 228.093, F.S., is to protect the rights of students and their parents with respect to student records and reports that are created, maintained, and used by the public educational institutions in Florida. Subsection (1) states that the intent of the Legislature is that students and parents *shall* have rights of access, challenge, and privacy with respect to student records. The section of Florida law defines "directory information" and "records" and "reports".

*"Directory information"* is defined as including the student's name, address, phone number (if it is a listed number), date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

*"Records" and "reports"* mean any and all official records, files, and data directly related to students and created, maintained, and used by public educational institutions. This includes material in each student's cumulative record folder and intended for school use or to be available to parties outside the school system for legitimate educational or research purposes. Materials that are considered part of the student's records include, but are not necessarily limited to:

- identifying data, including a student's social security number;
- academic work completed;
- level of achievement records, including grades and standardized achievement test scores;
- attendance data;
- scores on standardized intelligence, aptitude, and psychological tests;
- interest inventory results;
- health data;
- family background information;
- teacher or counselor ratings and observations;
- verified reports of serious or recurrent behavior patterns; and
- any other evidence, knowledge, or information recorded in any medium including, but not limited to, handwriting, typewriting, print, magnetic tapes, film, microfilm,

and microfiche, and maintained and used by an educational agency or institution or by a person acting for such an agency or institution.

Section 228.093, F.S., also specifies what "records" and "reports" do *not* include:

- Records of instructional, supervisory, and administrative personnel, such as an instructor's grade books;
- Records of law enforcement units of the institution which are solely for law enforcement purposes;
- Records made and maintained in the normal course of business relating to a student's capacity as an employee and are not for any other purpose;
- Records created or maintained by a physician, or other recognized professional acting in that capacity and used only in connection with the treatment of the student (these can be open to professional of student's choice);
- Directory information as defined above;
- Other information, files, or data that do not permit the personal identification of a student;
- Letters or statements of recommendation or evaluation which were confidential under Florida law and were received and made a part of the student's records prior to July 1, 1977;
- Copies of the student's fingerprints.

Parents or guardians of a student (and students who are 18 and not their parents' dependent as defined by the Internal Revenue Code of 1954) attending public school have the following rights:

- Right of access
- Right of waiver of access to confidential letters or statements;
- Right to challenge and hearing; and
- Right of privacy.

#### *Right of Privacy*

Personally identifiable *records or reports* of a student and any personal information in those records, are confidential and exempt from s. 119.07(1), F.S., which requires any person having custody of public records to permit inspection, examination and duplication of the record. Written consent of the student's parent or the eligible student is required to release the student records. However, there are exceptions and the *records may be released to the following persons or organizations without parental or student consent.*

- Officials of schools, school systems, area technical centers, community colleges, or institutions of higher learning in which the student seeks or intends to enroll;
- Other school officials, including teachers, who have legitimate educational interests in the information;
- United States Secretary of Education, the Director of the National Institute of Education, the Assistant Secretary for Education, the Comptroller General of the United States, or state or local educational authorities who are authorized to receive such information according to federal or state law;
- Other school officials, in connection with a student's financial aid;
- Individuals or organizations conducting studies for an institution or board of education for the purpose of developing, validating, or administering predictive tests, administering pupil or student aid programs, or improving instruction, if the studies are conducted so that students and parents are not personally identified;
- Accrediting organizations to carry out their accrediting functions;
- For use as evidence in student expulsion hearings conducted by a district school board pursuant to the provisions of the Administrative Procedure Act;

- Appropriate parties in an emergency, if the information is necessary for the health, or safety of the student or other individuals;
- Auditor General in connection with his official functions (such information is exempt from the inspection of public records law in s. 119.07(1), F.S.);
- A court of competent jurisdiction or a person or entity pursuant to a court of competent jurisdiction in compliance with an order of that court or the attorney of record pursuant to a lawfully issued subpoena, upon the condition that the parent or eligible student are notified in advance;
- Credit bureaus, in connection with financial aid, if disclosure is only to the extent necessary to enforce the terms or conditions of the financial aid agreement; and
- Parties to an interagency agreement among the Department of Juvenile Justice, school and law enforcement authorities and other signatory agencies for the purpose of reducing juvenile crime and especially motor vehicle theft by promoting cooperation and collaboration and the sharing of appropriate information in a joint effort to improve school safety, to reduce truancy, in-school and out-of-school suspensions and expulsions, to support alternatives to suspensions and expulsions, to correct behaviors that lead to truancy, and to support students in successfully completing their education.

Although an educational institution is not prohibited from publishing and releasing to the general public *directory information* relating to a student if the educational institution elects to do so, an educational institution may not release to any individual, agency, or organization information that is not listed above unless the information is normally published for the purpose of release to the public in general. If *directory information* is made public, the educational institution must give public notice of the categories of information which it has designated as *directory information* with respect to all students attending the institution and must allow a reasonable time period after the notice for a parent or eligible student to inform the educational institution in writing that any or all of the information should not be released.

According to DOE, examples of uses of directory information by public entities include the publishing of school honor rolls in the local newspaper, provision of athlete information to the media, and the release of student names and addresses to companies providing student pictures.

### **Federal Law**

The federal law (20 USC 1232(g)) and its regulations (34 CFR 99.1-99.67) which governs educational records is the Family Education Rights and Privacy Act (FERPA). It provides for the release of personally identifiable information without parental consent under specific circumstances. One of those circumstances is the sharing of such information with juvenile justice agency officials on children who are at risk of involvement or who have become involved with the juvenile justice system prior to adjudication, to the extent allowed by state statute.

Compliance with FERPA is required by all educational agencies or institutions that receive federal funds. Currently, educational institutions, which includes public schools, vocational-technical training centers, community colleges, or institutions of higher learning in the State University System, are authorized by FERPA (in addition to the authorization in s. 228.093, F.S., described above) to release directory information to the general public. Parents do retain the right to consent to the disclosure of such information, but under the federal law (and s. 228.093, F.S., described above) the parent must advise the school of this decision.

The Florida Department of Education has determined that pursuant to FERPA's exception to prior consent provision state and/or local educational agencies are permitted to release personally identifiable information without the consent of the eligible student or student's parent to the Department of Highway Safety and Motor Vehicles (DHSMV) and the Department of Children and Family Services (DCF) for purposes of the administration of the school attendance requirements of the driver's license eligibility and the Learnfare program provisions.

### **Compulsory Attendance Requirement for Driver's License Eligibility and Learnfare Program Cash Assistance**

Section 232.19(2)(b), F.S., requires the superintendent of a public school district to provide the Department of Highway Safety and Motor Vehicles (DHSMV) the legal name, sex, date of birth, and social security number of minors who accumulate 15 unexcused absences in a period of 90 calendar days. Section 322.091, F.S., provides that minors failing to satisfy attendance requirements are not eligible for driving privileges.

The Learnfare program, pursuant to s. 414.125, F.S., requires that all school-age children of program participants or eligible teenage participants attend school on a regular basis. The Learnfare program participant with a school-age child is required to have a school conference during each grading period. Failure to comply with these requirements may result in the Department of Children and Family Services (DCF) reducing the temporary cash assistance for the child or eligible teenage participant.

#### *Cooperation Between Local School Districts and DHSMV and DCF*

These programs require close cooperation between local school districts and DHSMV and DCF. According to DOE, most school districts are currently implementing these programs and providing the required data to both agencies. Exceptions are Miami-Dade and Seminole County School Districts. They have not complied with the driver's license requirements pursuant to their interpretation of the Title 20 United States Code Section 1232g, Family Education Rights and Privacy Act (FERPA).

A recent Florida Supreme Court ruling in Shadler vs State of Florida, \_\_\_So.2d\_\_\_ (Fla.2000) determined that DHSMV is a law enforcement agency, supporting the authority of school districts to release the information without prior consent of the pupil or pupil's parent to DHSMV.

The compulsory attendance requirements for the Learnfare program and the driver's license eligibility address truancy of students and serve as a strategy for addressing juvenile delinquency. The juvenile justice system exception to FERPA's prior consent provision allows disclosure of personally identifiable student information found in educational records without the consent of the parent or eligible student provided four conditions are met. The Learnfare program and the driver's license eligibility criteria comply with these conditions.

#### **C. EFFECT OF PROPOSED CHANGES:**

##### **Release of Personally Identifiable Student Records**

HB 633 clarifies that the release of personally identifiable student records to the Department of Highway Safety and Motor Vehicles for purposes of the compulsory attendance driver's license eligibility requirements and to the Department of Children and

Family Services for purposes of the Learnfare program compulsory attendance requirements is authorized. These revisions may alleviate some school districts' concerns regarding compliance with FERPA. However, the recent Supreme Court decision in Shadler vs. State of Florida, together with briefs of DOE's legal department, support the authority for school districts to release the information to DHSMV and DCF without prior consent of the eligible student or student's parent. Therefore, the proposed addition for the compulsory attendance driver's license eligibility is not necessary for *implementation* of either of these programs.

### Release of Directory Information

HB 633 removes the provision that an educational institution is not prohibited from publishing and releasing to the general public *directory information* relating to a student if the educational institution elects to do so. It sets different parameters for the release of *directory information* to school districts and K-12 educational institutions and non-K-12 educational institutions. It provides that no *school district or K-12 educational institution* may release *directory information unless the school district or K-12 educational institution has received the written consent of the student's parent or guardian*. The bill adds *business and individual student* to the entities to which the information will not be released without the required written consent. The bill removes the exception for release of directory information that is normally published for the purpose of release to the public in general.

The bill requires that, prior to each release of directory information, a school district or K-12 educational institution must provide written notification to the parent or guardian of each student whose information will be released. The notification must list the specific directory information to be released and the individual, agency, business, or organization that will receive the information. If written authorization from the parent is *not* obtained, the information must *not* be released.

Requiring the prior written authorization of parents before releasing directory information each time prevents school districts and schools from releasing directory information after publicly noticing the types of information designated and allowing a time period for the parent to inform the institution in writing that any or all of the information should not be released. The bill will change the process for a school or school district to release information for purposes of publishing of school honor rolls in the local newspaper, provision of athlete information to the media, and the release of student names and addresses to companies providing student pictures, class rings, and school uniforms.

#### D. SECTION-BY-SECTION ANALYSIS:

**Section 1** Amends s. 228.093, F.S., authorizing the release of personally identifiable student records to the Department of Highway Safety and Motor Vehicles for purposes of the compulsory attendance driver's license eligibility requirements and to the Department of Children and Family Services for purposes of the Learnfare program compulsory attendance requirements; clarifying provisions relating to the release of directory information.

**Section 2** Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The DOE bill analysis for HB 633 states: "The requirement to obtain prior written authorization from parents will require additional resources: staff, time, and distribution of forms; thus having a fiscal impact." However, the current requirement is to publicly notice and allow a time period for parents to respond. Although the process is changed, staff, time and distribution of forms is required in both instances.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties and municipalities.

**STORAGE NAME:** h0633.ei

**DATE:** February 3, 2000

**PAGE 8**

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Section 228.093, F.S., falls under the exemption in paragraph (d) of Article I, Section 24 of the Florida Constitution, relating to public records. The legal staff of the House Committee on Governmental Operations has reviewed this bill and determined that the amendments contained in the bill do not necessitate a statement of public necessity, as the effect is merely to alter the way in which already exempt information may be released.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Staff Director:

\_\_\_\_\_  
Ouida J. Ashworth

\_\_\_\_\_  
Ouida J. Ashworth