

STORAGE NAME: h0633s1.ei

DATE: February 10, 2000

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

BILL #: CS/HB 633

RELATING TO: Student Records

SPONSOR(S): Committee on Education Innovation and Representatives Alexander and Melvin

TIED BILL(S):

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

- (1) EDUCATION INNOVATION YEAS 8 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

CS/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.

CS/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.

Other revisions in the committee substitute reflect recent changes made to the federal law, Family Education Rights and Privacy Act (FERPA) and clarify existing terms and definitions.

The committee substitute provides that students who participate in extracurricular activities and who receive honors may still have their names released to newspapers for honors. However, locator information (address and phone number) is not to be released. The committee substitute changes the process for a school or school district to release information for purposes of information to the media, and the release of student names and addresses to companies providing student pictures, class rings, and school uniforms. The committee substitute 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 CS/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.

STORAGE NAME: h0633s1.ei

DATE: February 10, 2000

PAGE 2

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. Definitions given in subsection (2) include "child", "directory information", "pupil" and "records" and "reports".

"*Child*" is defined as a person who has not reached the age of majority.

"*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.

"*Pupil*" is defined as a child who is enrolled in any instructional program or activity conducted under the authority and direction of a district school board.

"*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 Access

The right of access includes the right of a parent or eligible student, upon request, to be shown any record or report relating to the student. When the record or report includes information on another student or students, the parent or eligible student may only receive the part pertaining to the student who is the subject of the request.

Right of Waiver of Access to Confidential Letters or Statements

The right of waiver of access to confidential letters or statements applies if the parent or eligible student is, upon request, notified of the names of all persons submitting the letters and the recommendations or evaluations are used solely for the purpose for which they were intended.

Right to Challenge and Hearing

A parent has the right to challenge records to ensure that the record is not inaccurate, misleading, or otherwise violates the privacy or other rights of the student and to provide an opportunity for correction, deletion, or expunction of inaccurate records. Any challenge

may be settled through informal meetings or discussions and if parties agree to make corrections, the appropriate school officials must take necessary actions to implement the agreement. If parties do not reach an agreement, a hearing must be held under State Board of Education rules, which must provide for: the hearing to be conducted at a reasonable time by an official of the educational institution or a party who does not have a direct interest in the outcome; parent or student to present relevant evidence; decision must be in writing within a reasonable time after the hearing; and appropriate school officials must take actions to implement the decision.

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.

Notification

Every parent, guardian and student entitled must be notified annually, in writing, of their rights of access, challenge, waiver, and privacy relating to student records and the types of student information maintained by the institution, and the procedures for exercising their rights. The notification must be general in form and may be incorporated with other distributed printed materials to students. It could be printed on the back of school assignment forms or report cards for K-12 students and in college catalogs or bulletins for college students.

Penalty

If the officials or employees of any public school, State University System, area technical center, community college, or district school board refuse to comply, the aggrieved parent or student entitled has the immediate right to bring action in circuit court and they may be awarded attorney's fees and court costs if their rights are vindicated.

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 under certain conditions. 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

CS/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.

Other revisions to the release of records or reports without consent are made to the release to *relevant* officials, in connection with financial aid *if the information is necessary to determine eligibility, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid*. "Financial aid" is defined as a payment of funds provided to an individual or a payment in kind of tangible or intangible property to the individual that is conditioned on the individual's attendance at an institution.

CS/HB 633 specifies that if the United States Department of Education Family Policy Compliance Office determines that a party who has received information for purposes of a study either permits personal identification of students or does not destroy information, the institution may not allow the third party access to personally identifiable information from education records for at least five years.

CS/HB 633 provides that when records or reports are released to a court of competent jurisdiction in compliance with an order of the court or the attorney of record pursuant to a lawfully issued subpoena and the parent or eligible student is notified it is *so that they may seek protective action, unless the disclosure is in compliance with a court order that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed. If the institution initiates legal action against a parent or student and has complied, it may disclose the student's education records that are relevant to the action to the court without a court order or subpoena.*

CS/HB 633 provides that when records or reports are released to parties to an interagency agreement, the interagency agreement must specify the conditions under which information is to be shared. All parties entering into such agreement must maintain confidentiality of the information unless otherwise provided by law.

Definitions

CS/HB 633 clarifies the definition of "directory information" by adding that it includes *information contained in an educational record of a student which would not generally be considered harmful or an invasion of privacy if disclosed.*

New definitions are added for "disciplinary action or proceeding", "disclosure", "eligible student", "parent", and "personally identifiable information". "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by the institution with respect to an infraction or violation of the rules of conduct for students.

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

"Eligible student" means a student who is 18 years old or attending a postsecondary school. The definition of "pupil" is deleted.

“Parent” includes a natural parent, guardian, or an individual acting as a parent in parent’s or guardian’s absence.

“Personally identifiable information” includes, but is not limited to the student’s name, parent’s name, address, social security number or other personal identifier, and personal characteristics or *information that would make student’s identity easily traceable*.

“Records” and “reports” definition is clarified to mean any student related records which are used by a institution or *by a party acting for the institution*.

The committee substitute clarifies that although employee records are not included in “records” and “reports”, records relating to a student who is employed as a result of his or her status as a student *are* education “records” and are not excepted. Clarification is also given to records used for medical treatment; “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the institution. Other records which are *not* included in definition of “records” and “reports” are records that only contain information about an individual after he or she is no longer a student at that institution. CS/HB 633 clarifies that *except as otherwise provided by law* copies of a student’s fingerprints may not be kept in a report or record of a public educational institution.

Rights

The committee substitute specifies that the parent has the right to *inspect and review* rather than *be shown*.

The right to challenge and hearing are revised. If a parent or eligible student believes the education records contain inaccurate, misleading information or violate the right of privacy, they may ask for the record to be amended. In a reasonable amount of time, the institution decides whether to amend as requested. If the institution decides not to amend, it informs the parent or eligible student of their right to a hearing. Upon request of the parent, the hearing is exempt from the public meetings and records law in s. 286.011, F.S. [NOTE: the rights are vested in the eligible student if the student is 18 or over. However, the committee substitute provides that parents of students who are 18 or over and are still tax dependents retain the right to receive the student’s records.]

The hearing must be held a reasonable time after the request is received and reasonably advanced notice must be given to the parent or eligible student of date, time and place. An official of the institution may conduct the hearing. He or she may not have a direct interest in the outcome. The parent or eligible student must be given a full and fair opportunity to present evidence relevant to the issues and they may be assisted or represented by another individual of their choice, including an attorney. This is at their own expense. The institution must make its decision in writing, base the decision solely on evidence presented and include a summary of evidence and reasons for decision. The appropriate school officials must implement the decision.

If, as a result of the hearing, the information is found to be inaccurate, misleading or violate privacy rights, the institution must amend the record. The institution must inform the parent in writing. If the information is found to not be inaccurate, misleading or violate privacy rights, the institution must inform the parent or eligible student of the right to place a statement in the record commenting on the contested information and/or stating why he or she disagrees with the decision. The institution must maintain the statement with the contested record and disclose the statement whenever it discloses the contested record.

Release of Directory Information

CS/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 committee substitute adds *business* and *individual student* to the entities to which the information will not be released without the required written consent. The committee substitute removes the exception for release of directory information that is normally published for the purpose of release to the public in general.

The committee substitute requires that, prior to releasing 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 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 committee substitute 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.

School districts or K-12 schools are not prohibited from publishing and releasing to the general public the name or size of any student participating in school activities or extracurricular activities or receiving an honor if:

- Student's address or phone number is not disclosed without the parent's written consent, and;
- Parent has not directed the school district or K-12 school *not* to release any information whatsoever on the student under any circumstances.

Notification

The committee substitute specifies that notification requirements are applicable to *parents of students currently in attendance or students currently in attendance*. Notice requirements are expanded to require the notice to inform parents or eligible students of the right to:

- Inspect and review the student's education records.
- Seek amendment of the student's education records if parent or eligible student believes record to be inaccurate, misleading, or a violation of privacy rights.
- Consent to disclosures of personally identifiable in the records except when disclosure is authorized.
- File with the United States Department of Education Family Policy Compliance Office noncompliance.

The notice must also include the procedure for inspecting and reviewing records and for requesting amendments to records. The institution must *effectively* notify parents or eligible students who are disabled. Elementary and secondary educational institutions must *effectively* notify parents who have a primary home language other than English.

Some of the changes made in CS/HB 633 reflect recent changes made to the federal law, Family Education Rights and Privacy Act (FERPA) and clarify existing terms and definitions. The term *pupils and students and their parents* is changed throughout the committee substitute to *parents and eligible students*. [NOTE: the rights are vested in the eligible student if the student is 18 or over. However, the committee substitute provides that parents of students who are 18 or over and are still tax dependents retain the right to receive the student's records.]

D. SECTION-BY-SECTION ANALYSIS:

Section 1 Amends s. 228.093, F.S., revising terminology, definitions, and exceptions, expanding the right to a hearing, providing a penalty for a third party violation, expanding notification requirements, 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 Amends s. 232.23, F.S., revising terminology.

Section 3 Amends s. 411.233, F.S., conforming name of department.

Section 4 Reenacts ss. 229.57(6), 240.237, 240.323, 240.40401, 242.3315, and 381.0056(5)(p), F.S., relating to student assessment, university student records, community college student records, student financial assistance, student and employee personnel records, and school health services, to incorporate the amendment of section 228.093, F.S.

Section 5 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 CS/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 committee substitute does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

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.

STORAGE NAME: h0633s1.ei

DATE: February 10, 2000

PAGE 13

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