

STORAGE NAME: h1405s1.ge.doc
DATE: April 11, 2001

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

BILL #: CS/HB 1405

RELATING TO: Student records

SPONSOR(S): Committee on General Education and Representatives Clarke, Harrell, Atwater, Kravitz, Rubio, Garcia, Benson, Attkisson, Kottkamp, Ross, Kallinger, McGriff, Melvin, Alexander, Fields, Sobel, Baker, Gibson, Bennet, and Berfield

TIED BILL(S):

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

- (1) GENERAL EDUCATION YEAS 11 NAYS 0
- (2) CHILD AND FAMILY SECURITY
- (3) COUNCIL FOR LIFELONG LEARNING
- (4)
- (5)

I. SUMMARY:

CS/HB 1450 revises provisions on the privacy of (and access to) student information. The Committee Substitute (CS) sets conditions for the release of directory information to various entities. It provides that no school district or K-12 educational institution may release directory information to an individual, agency, or organization unless the school district or K-12 educational institution has received prior written consent from the student's parent or guardian.

The CS authorizes the release of personally identifiable student records to several new entities: the Department of Highway Safety and Motor Vehicles for purposes of the compulsory attendance driver's license eligibility requirements, to the Department of Children and Family Services for purposes of the Learnfare program compulsory attendance requirements, to parents of a dependent student, to parents of student who is not an eligible student, to the alleged victim of a violent crime, and to the court.

This CS is substantially identical (with only a few substantive modifications) to last year's CS/HB 633 (2000), which passed the House and died in the Senate Committee on Education. Most of the changes distinguishing this bill from last year's bill were made in order to reflect changes that have been made to the federal law, the Family Education Rights and Privacy Act (FERPA).

The CS provides that, notwithstanding the general policy on requiring consent before releasing information, the school may nevertheless release information on students participating in extracurricular activities and receiving honors, without being required to obtain prior consent. However, locator information (address and phone number) is not to be released.

The CS changes the process for a school or school district to release information for purposes of information to the media, and regarding the release of student names and addresses to companies providing student pictures, class rings, and school uniforms.

The CS does not have a significant fiscal impact on state or local government

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

Currently, "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; and
- 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 that: the hearing must 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; the parent or student must be allowed to present relevant evidence; the decision must be in writing within a reasonable time after the hearing; and the appropriate school officials must take actions to implement the decision. Upon

request of the parent, guardian or student, the hearing is exempt from the public meetings law in s. 286.011, F.S.

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;
- The 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;
- The 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 printed materials distributed 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 has the immediate right to bring action in circuit court and they may be awarded attorney's fees and court costs if his or her rights are vindicated.

Opportunity Scholarship Program

The Opportunity Scholarship Program is a school choice program created by the Legislature in the 1999 Legislative Session. It was part of the A+ Education Plan passed in CS/HBs 751, 753, & 755. Opportunity Scholarships are available for eligible students to attend the eligible public or private school of their choice.

A public school student is eligible for an Opportunity Scholarship to attend an eligible public or private school of their choice if one of the following criteria is met:

- The student spent the prior school year in attendance at a public school which was graded "F", and the school has had such low performance for 2 years in a 4 year period;
- The student was in attendance elsewhere in the public school system and has been assigned to such school;
- The student is entering kindergarten or first grade and has been assigned to such school.

Students attending a non-public (private) school are not required to take statewide assessment examinations. However, a student attending a non-public school *pursuant to an opportunity scholarship* is required to take such assessment examinations (s. 229.0537[5][d], F.S.). These students will take the examination at the public school, the examination is sealed and forwarded to the DOE for scoring, then it is returned to the public school, which send it on to the non-public school. There is currently some concern that the law does not clearly provide that these student records for non-public school students are confidential while in the hands of the public institutions.

FERPA

The federal law (20 U.S.C. 1232[g]) and its regulations (34 CFR 99.1-99.67) which govern 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.

All educational agencies or institutions that receive federal funds are required to comply with FERPA. 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 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 semester. 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, all school districts are currently implementing these programs and providing the required data to both agencies.

A recent Florida Supreme Court ruling in *Shadler v. State*, No. SC93784 (Fla., Jan. 6, 2000), determined that DHSMV is a law enforcement agency (under exclusionary rule analysis). This supports the authority of school districts to release the information without prior consent of the student or student'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 1405 clarifies release of personally identifiable student records, revising the provision relating to the release of records or reports, providing that it shall be done only *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.

The bill 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.

The bill clarifies the authority for the release of personally identifiable student records to DHSMV for purposes of the compulsory attendance driver's license eligibility requirements and to DCF for purposes of the Learnfare program compulsory attendance requirements. These revisions may alleviate some school districts' concerns regarding compliance with FERPA. However, the recent Florida Supreme Court decision in *Shadler v. State*, together with briefs of DOE's legal department, support the current 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.

The bill provides for the release of student records to the parent of a dependent student, as defined in 26 U.S.C. 152 of the Internal Revenue Code of 1986, and to the parent of a student who is not an eligible student or to the student.

The bill also provides for the release of the results of any disciplinary proceeding conducted by a post-secondary school against the alleged perpetrator of a violent crime to the alleged victim of that violent crime.

The bill also provides for release of the educational records of a student to:

- The courts, if the educational institution is the plaintiff or defendant in the case;
- The victim of a crime of violence or a non-forcible sex offence, with certain limitations;
- The parent of a student at a post-secondary institution a violation regarding alcohol or controlled substances; and
- The alleged victim of a crime of violence.

Definitions

The bill clarifies and adds new definitions. "Records" and "reports" are clarified to mean any student related records that are used by an institution or by a party acting for the institution. It also 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. The bill 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 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 or eligible student, 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 bill 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 within 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, but 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, 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.

The bill clarifies that when a student becomes an "eligible student" (a student who is at least 18 years old), the rights accorded to, and the consent required of, parents transfer from the parent to the student.

Release of Directory Information

The bill 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 conditions for the release of directory information. 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. 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 provides 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.

The bill provides that school districts or K-12 schools may publish or release the name or size of any student participating in school activities or extracurricular activities or receiving an honor if:

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

Notification

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 the parent or eligible student believes the record to be inaccurate, misleading, or a violation of his or her privacy rights;
- Consent to disclosures of personally identifiable in the records except when disclosure is authorized; and
- File allegations of noncompliance with the United States Department of Education Family Policy Compliance Office.

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 the bill reflect recent changes made to the federal law, the 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.

The bill also provides that statewide assessment records for nonpublic school students are confidential when held by educational institution or agency.

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, to the Department of Children and Family Services for purposes of the Learnfare program compulsory attendance requirements, parents of a dependent student, parents of student who is not an eligible student, and certain information to the alleged victim of a violent crime; to courts under certain circumstances, clarifying provisions relating to the release of directory information, and providing that statewide assessment records for nonpublic school students are confidential when held by educational institution or agency.

Section 2. Amends s. 232.23, F.S., making technical changes, conforming and revising terminology.

Section 3. Reenacts ss. 229.57(6), 240.237, 240.323, 240.40401, 242.3315, and 381.0056(5)(p) and 411.223, F.S., for purely technical purposes, incorporating the amendment of section 228.093, F.S.

Section 4. Provides that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DOE states that "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, no specific numbers have been offered, and it should be noted that the alternative system -- one in which the school would allow a period for parents to file a form directing the school not to release the information -- would not be without its own set of costs to administer.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. RULE-MAKING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. OTHER COMMENTS:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 2, 2001, the House Committee on General Education adopted a strike-everything amendment. This amendment retained all of the substantive provisions of the original bill, while making technical changes to conform with FERPA, and making substantive changes adding several instances in which student information may be released, and clarifying that statewide student assessment records of nonpublic students are confidential when held by public school institutions or agencies. The committee then passed the bill as a Committee Substitute.

VII. SIGNATURES:

COMMITTEE ON GENERAL EDUCATION:

Prepared by:

Staff Director:

Gip Arthur

Ouida Ashworth