

HOUSE BILL No. 5140

October 19, 2017, Introduced by Reps. Allor, Lucido, Victory, Kelly, Kahle, Frederick, Kosowski, Hughes, Alexander and Hauck and referred to the Committee on Workforce and Talent Development.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending section 1136 (MCL 380.1136), as added by 2016 PA 367,
and by adding section 1139a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1136. (1) To protect pupil privacy, the superintendent of
2 public instruction shall ensure that the department complies with
3 all of the following and the state budget director shall ensure
4 that CEPI complies with all of the following:

5 (a) The department or CEPI shall not sell any information that
6 is part of a pupil's education records.

7 (b) Within 30 days after the effective date of this section,

1 the department and CEPI each shall post on its website a notice of
2 the information it collects for a pupil's education records. The
3 notice shall include at least an inventory of all pupil data
4 elements collected by the department or CEPI and a description of
5 each pupil data element.

6 (c) At least 30 days before initiating the collection of any
7 pupil data elements in addition to those already disclosed in the
8 inventory under subdivision (b), the department or CEPI shall post
9 on its website a notice of the additional pupil data elements it is
10 proposing to collect and an explanation of the reasons for the
11 proposal.

12 (d) The department or CEPI shall not disclose any information
13 concerning a pupil that is collected or created by the department
14 or CEPI except in accordance with a policy adopted and made
15 publicly available by the superintendent of public instruction or
16 state budget director, as applicable, that clearly states the
17 criteria for the disclosure of the information.

18 (e) The department or CEPI shall ensure that any contract it
19 has with a vendor that allows the vendor access to education
20 records contains express provisions requiring the vendor to protect
21 the privacy of education records and provides express penalties for
22 noncompliance.

23 (f) If the department or CEPI provides any personally
24 identifiable information concerning a pupil that is collected or
25 created by the department or CEPI as part of the pupil's education
26 records to any person other than the school district, intermediate
27 school district, public school academy, authorizing body,

1 preschool, or postsecondary institution in which the pupil is
2 currently or was formerly enrolled, or the pupil's parent or legal
3 guardian, then the department or CEPI shall, if the pupil is under
4 18 years of age or claimed as a dependent on a parent's or legal
5 guardian's federal income tax return, disclose to the pupil's
6 parent or legal guardian upon his or her written request all of the
7 following:

8 (i) The specific data fields that were disclosed.

9 (ii) The name and contact information of each person, agency,
10 or organization to which the information has been disclosed.

11 (iii) The reason for the disclosure.

12 (g) The department or CEPI shall disclose the information
13 under subdivision (f) within 30 days after receiving the written
14 request and without charge to the parent or legal guardian. If the
15 department or CEPI considers it necessary to make redacted copies
16 of all or part of a pupil's education records in order to protect
17 personally identifiable information of another pupil, the
18 department or CEPI shall not charge the parent or legal guardian
19 for the cost of making those copies.

20 (2) To protect pupil privacy, the board of a school district
21 or intermediate school district or board of directors of a public
22 school academy shall ensure that the school district, intermediate
23 school district, or public school academy complies with all of the
24 following, and the governing board of an authorizing body shall
25 ensure that the authorizing body complies with all of the
26 following:

27 (a) A school district, an intermediate school district, a

1 public school academy, an educational management organization, or
2 an authorizing body shall not sell or otherwise provide to a for-
3 profit business entity any personally identifiable information that
4 is part of a pupil's education records. This subdivision does not
5 apply to any of the following situations:

6 (i) For a pupil enrolled in a public school academy, if the
7 public school academy has a management agreement with an
8 educational management organization, the public school academy
9 providing the information to that educational management
10 organization.

11 (ii) Providing the information as necessary for standardized
12 testing that measures the pupil's academic progress and
13 achievement.

14 (iii) Providing the information as necessary to a person that
15 is providing educational or educational support services to the
16 pupil under a contract with the school district, intermediate
17 school district, public school academy, or educational management
18 organization.

19 **(iv) PROVIDING THE INFORMATION TO A PROPRIETARY SCHOOL,**
20 **COMMUNITY COLLEGE, OR SKILLED TRADE EMPLOYER UNDER SECTION 1139A.**

21 (b) Upon written request by a pupil's parent or legal
22 guardian, a school district, an intermediate school district, a
23 public school academy, or an authorizing body shall disclose to the
24 parent or legal guardian any personally identifiable information
25 concerning the pupil that is collected or created by the school
26 district, intermediate school district, public school academy, or
27 authorizing body as part of the pupil's education records.

1 (c) Subject to the exemptions under subsection (3), if a
2 school district, intermediate school district, public school
3 academy, or authorizing body provides any information described in
4 subdivision (b) to any person, agency, or organization, then the
5 school district, intermediate school district, public school
6 academy, or authorizing body shall disclose to the pupil's parent
7 or legal guardian upon his or her written request all of the
8 following:

9 (i) The specific information that was disclosed.

10 (ii) The name and contact information of each person, agency,
11 or organization to which the information has been disclosed.

12 (iii) The legitimate reason that the person, agency, or
13 organization had in obtaining the information.

14 (d) A school district, an intermediate school district, a
15 public school academy, or an authorizing body shall disclose the
16 information under subdivisions (b) and (c) within 30 days after
17 receiving the written request and without charge to the parent or
18 legal guardian. If the school district, intermediate school
19 district, public school academy, or authorizing body considers it
20 necessary to make redacted copies of all or part of a pupil's
21 education records in order to protect personally identifiable
22 information of another pupil, the school district, intermediate
23 school district, public school academy, or authorizing body shall
24 not charge the parent or legal guardian for the cost of those
25 copies.

26 (3) Subsection (2)(c) does not apply to any of the following
27 situations:

1 (a) A school district, intermediate school district, public
2 school academy, or authorizing body providing the information to
3 the department or CEPI.

4 (b) A school district, intermediate school district, public
5 school academy, or authorizing body providing the information to
6 the pupil's parent or legal guardian.

7 (c) A public school academy providing the information to its
8 authorizing body or to an educational management organization with
9 which it has a management agreement.

10 (d) A school district or public school academy providing the
11 information to its intermediate school district or to another
12 intermediate school district providing services to the school
13 district or public school academy or its pupils pursuant to a
14 written agreement.

15 (e) An intermediate school district providing the information
16 to a school district or public school academy in which the pupil is
17 enrolled or to a school district or public school academy for which
18 the intermediate school district is providing services pursuant to
19 a written agreement.

20 (f) An authorizing body providing the information to a public
21 school academy in which the pupil is enrolled.

22 (g) Providing the information to a person, agency, or
23 organization with written consent from the pupil's parent or legal
24 guardian or, if the pupil is at least age 18, the pupil.

25 (h) Providing the information to a person, agency, or
26 organization seeking or receiving records in accordance with an
27 order, subpoena, or ex parte order issued by a court of competent

1 jurisdiction.

2 (i) Providing the information as necessary for standardized
3 testing that measures the pupil's academic progress and
4 achievement.

5 (j) A school district, intermediate school district, public
6 school academy, or authorizing body providing information that is
7 covered by the opt-out form described in subsection (6), unless the
8 pupil's parent or legal guardian or, if the pupil is at least age
9 18 or is an emancipated minor, the pupil has signed and submitted
10 the opt-out form under subsection (6) (d).

11 (4) If an educational management organization receives
12 information that is part of a pupil's education records from any
13 source as permitted under this section, the educational management
14 organization shall not sell or otherwise provide the information to
15 any other person except as provided under this section.

16 (5) In addition to ensuring compliance with subsection (1),
17 the superintendent of public instruction shall ensure that the
18 department, and the state budget director shall ensure that CEPI,
19 complies with all other applicable privacy law.

20 (6) For the purposes of this section, each school district,
21 intermediate school district, public school academy, or authorizing
22 body shall do all of the following:

23 (a) Develop a list of uses for which the school district,
24 intermediate school district, public school academy, or authorizing
25 body commonly would disclose a pupil's directory information.

26 (b) Develop an opt-out form that lists all of the uses or
27 instances under subdivision (a) and allows a parent or legal

guardian to elect not to have his or her child's directory information disclosed for 1 or more of these uses.

(c) Present the opt-out form under subdivision (b) to each pupil's parent or legal guardian within the first 30 days of the school year. A school district, intermediate school district, public school academy, or authorizing body also shall make the form available to a parent or legal guardian at other times upon request.

(d) If an opt-out form under subdivision (b) is signed and submitted to the school district, intermediate school district, public school academy, or authorizing body by a pupil's parent or legal guardian, the school district, intermediate school district, public school academy, or authorizing body shall not include the pupil's directory information in any of the uses that have been opted out of in the opt-out form.

(7) If a pupil is at least age 18 or is an emancipated minor, the pupil may act on his or her own behalf under subsection (6).

(8) As used in this section:

(a) "Authorizing body" means that term as defined in part 6a, 6c, or 6e or section 1311b, as applicable.

(b) "CEPI" means the center for educational performance and information created under section 94a of the state school aid act of 1979, MCL 388.1694a.

(c) "Directory information" means that term as defined in 34 CFR 99.3.

(d) "Education records" means that term as defined in 34 CFR 99.3.

1 (e) "Educational management organization" means that term as
2 defined in section 503c, 523c, or 553c, as applicable.

3 (f) "Management agreement" means that term as defined in
4 section 503c, 523c, or 553c, as applicable.

5 (g) "Personally identifiable information" means that term as
6 defined in 34 CFR 99.3.

7 SEC. 1139A. (1) SUBJECT TO SUBSECTION (2), AT LEAST ANNUALLY,
8 THE BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL DISTRICT, OR
9 BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY, THAT OPERATES ANY OF
10 GRADES 9 TO 12 SHALL PROVIDE ACCESS TO PUPIL DIRECTORY INFORMATION
11 OF ITS PUPILS ENROLLED IN GRADES 9 TO 12 TO A REPRESENTATIVE OF A
12 PROPRIETARY SCHOOL, COMMUNITY COLLEGE, OR SKILLED TRADE EMPLOYER.

13 (2) THE BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL
14 DISTRICT, OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY, SHALL
15 NOT PROVIDE PUPIL DIRECTORY INFORMATION OF A PUPIL UNDER SUBSECTION
16 (1) UNLESS THE PARENT OR LEGAL GUARDIAN OF A PUPIL SUBMITS TO THE
17 SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL
18 ACADEMY SIGNED, WRITTEN PERMISSION THAT INDICATES THAT THE PARENT
19 OR LEGAL GUARDIAN WANTS THE PUPIL'S DIRECTORY INFORMATION TO BE
20 PROVIDED TO A REPRESENTATIVE OF A PROPRIETARY SCHOOL, COMMUNITY
21 COLLEGE, OR SKILLED TRADE EMPLOYER. A PARENT OR LEGAL GUARDIAN WHO
22 GRANTS PERMISSION UNDER THIS SUBSECTION MAY REVOKE THAT PERMISSION
23 AT ANY TIME BY SUBMITTING A WRITTEN NOTICE TO THE SCHOOL DISTRICT,
24 INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY. THE BOARD
25 OF THE SCHOOL DISTRICT OR INTERMEDIATE SCHOOL DISTRICT, OR BOARD OF
26 DIRECTORS OF A PUBLIC SCHOOL ACADEMY, SHALL ENSURE THAT PUPILS AND
27 PARENTS AND LEGAL GUARDIANS ARE NOTIFIED OF THE PROVISIONS OF THIS

1 SUBSECTION.

2 (3) IF A PUPIL IS AT LEAST AGE 18 OR IS AN EMANCIPATED MINOR,
3 THE PUPIL MAY ACT ON HIS OR HER OWN BEHALF UNDER SUBSECTION (2).

4 (4) A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC
5 SCHOOL ACADEMY THAT OPERATES ANY OF GRADES 9 TO 12 SHALL PROVIDE
6 ANY PUBLIC NOTICE REQUIRED UNDER 20 USC 1232G IN ORDER TO COMPLY
7 WITH THIS SECTION AND FEDERAL LAW.

8 (5) THE BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL
9 DISTRICT, OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY, THAT
10 OPERATES ANY OF GRADES 9 TO 12 MAY REQUIRE A REPRESENTATIVE OF A
11 PROPRIETARY SCHOOL, COMMUNITY COLLEGE, OR SKILLED TRADE EMPLOYER
12 DESCRIBED IN SUBSECTION (1) TO PAY A FEE, NOT TO EXCEED THE ACTUAL
13 COSTS INCURRED BY THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL
14 DISTRICT, OR PUBLIC SCHOOL ACADEMY, FOR COPYING AND MAILING OR
15 OTHERWISE PROVIDING PUPIL DIRECTORY INFORMATION UNDER THIS SECTION.

16 (6) A REPRESENTATIVE OF A PROPRIETARY SCHOOL, COMMUNITY
17 COLLEGE, OR SKILLED TRADE EMPLOYER WHO RECEIVES PUPIL DIRECTORY
18 INFORMATION UNDER THIS SECTION SHALL USE THAT INFORMATION ONLY TO
19 PROVIDE INFORMATION TO PUPILS CONCERNING EDUCATIONAL AND CAREER
20 OPPORTUNITIES AVAILABLE AT THE PROPRIETARY SCHOOL, COMMUNITY
21 COLLEGE, OR SKILLED TRADE EMPLOYER'S BUSINESS. A REPRESENTATIVE OF
22 A PROPRIETARY SCHOOL, COMMUNITY COLLEGE, OR SKILLED TRADE EMPLOYER
23 WHO RECEIVES PUPIL DIRECTORY INFORMATION UNDER THIS SECTION SHALL
24 NOT RELEASE THAT INFORMATION TO A PERSON WHO IS NOT INVOLVED IN
25 RECRUITING STUDENTS OR EMPLOYEES FOR THE PROPRIETARY SCHOOL,
26 COMMUNITY COLLEGE, OR SKILLED TRADE EMPLOYER.

27 (7) THE BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL

1 DISTRICT, OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY, THAT
2 PROVIDES ACCESS TO PUPIL DIRECTORY INFORMATION UNDER SUBSECTION (1)
3 MAY OBTAIN THE PUPIL DIRECTORY INFORMATION FROM THE MICHIGAN DATA
4 HUB NETWORK UNDER SECTION 22M OF THE STATE SCHOOL AID ACT OF 1979,
5 MCL 388.1622M.

6 (8) AS USED IN THIS SECTION:

7 (A) "PROPRIETARY SCHOOL" MEANS A PROPRIETARY SCHOOL LICENSED
8 UNDER THE PROPRIETARY SCHOOLS ACT, 1943 PA 148, MCL 395.101 TO
9 395.103.

10 (B) "PUPIL DIRECTORY INFORMATION" MEANS A PUPIL'S NAME AND
11 ADDRESS AND, IF IT IS A LISTED OR PUBLISHED TELEPHONE NUMBER, THE
12 PUPIL'S TELEPHONE NUMBER.