

SB 292 -- Redline

HA 2 to SB 292 to Bill Text -- AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO DISCLOSURE OF PUPILS' SCHOOL RECORDS.

Deletions ~~struck~~ · Insertions underlined

~~Rep. Sen.~~

~~Sturgeon & Rep.~~

~~Williams HOUSE Sen. OF REPRESENTATIVES 152nd GENERAL ASSEMBLY HOUSE AMENDMENT NO.~~

~~2Walsh; TO SENATE BILL NO.~~

~~202Rep. AMEND Senate Bill No.~~

~~202Parker on Selby line DELAWARE 7 STATE by SENATE deleting 152nd "09." GENERAL and ASSEMBLY inserting SENATE in BILL lieu NO. thereof the following:~~

~~"09292 and, AN with ACT respect TO to AMEND records TITLE for 14 students OF with THE disabilities, DELAWARE in CODE accordance RELATING with TO Chapter DISCLOSURE 31 OF of PUPILS' Title SCHOOL 14 RECORDS. ("Chapter 31") and its implementing regulations."~~

~~FURTHER BE AMEND IT Senate ENACTED Bill BY No. THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:~~

~~202Section on 1. line 8 by deleting "its" and inserting in lieu thereof the following:~~

~~"Chapter Amend 31 Sec. 4111, Title 14 of the Delaware Code by making deletions as shown by strike through and their" insertions as shown by underline as follows:~~

~~FURTHER Sec. AMEND 4111. Senate Bill No.~~

~~202Disclosure on of line pupils' 44 school by records. deleting "required authorized" and inserting in lieu thereof:~~

~~"required(a) authorized". Educational records of students in all public and private schools in this State are deemed to be confidential.~~

~~SYNOPSIS Educational Senate records Bill may No. be released, and personally identifiable information contained therein disclosed, only in accordance with rules and regulations of the Department of Education.~~

~~202 updates the statute on disclosure of pupil records to ensure compliance with the Family Educational Rights and Privacy Act ("FERPA") and under improve 20 information U.S.C. sharing between institutions and programs operating in the State, including local postsecondary institutions and local education agencies, and the Department of Education.~~

~~This Sec. Amendment 1232g does and the its following: implementing regulations set forth in 34 CFR Part 99.~~

~~(1) Such Conforms rules Senate and Bill regulations No. FERPA and its implementing regulations shall authorize the release of educational records upon written consent and shall establish the other terms and conditions on which educational records may and must be released.~~

~~202(b) with The existing provisions law relating to the right of students subsection with (a) disabilities and their parents to obtain copies of educational this records section upon notwithstanding, request, notwithstanding:~~

~~(2)(1) Corrects educational Educational institutions and programs operating in this State, including local education agencies and postsecondary institutions and programs regulated by a technical state strikethrough agency, shall disclose to the Department such education records, and underlining personally error, identifiable information contained therein, necessary for the audit or evaluation of state and federal education programs in accordance with the terms and conditions of a written agreement negotiated between the Department and each educational institution or program from which education records are sought.~~

~~Such agreements shall:~~

~~provisions of FERPA and its implementing regulations.~~

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

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

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

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

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~~06/26/2024 05/08/2024 00:47:04:53 AMPM 0231520034 (5) Prohibit any disclosure of education records or personally identifiable information contained therein by an educational institution or program in violation of applicable state or federal privacy laws;~~

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

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

(2) Pursuant to the legitimate interest in data exchange and compliance with federal and state reporting requirements, educational institutions and programs operating in this State, including local education agencies and postsecondary institutions and programs regulated by a state agency who outsource data exchange and compliance with federal and state reporting requirements to the Department, may consider the Department to be a school official as defined under FERPA's implementing regulations in 34 CFR Part 99.31.

Local education agencies and other educational institutions and programs may disclose to the Department, without parental consent, the educational records, and personally identifiable information contained therein, necessary for the purpose of data exchange and federal and state reporting as required by law, if all of the following conditions are met:

a.

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

b.

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

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

d.

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

(3) All disclosures required authorized by this section shall must be for the purpose of ensuring the effectiveness of publicly-funded programs by connecting pre-kindergarten through grade 12 and post-secondary data, and sharing information to improve early childhood and workforce programs as set forth in Delaware's State Fiscal Stabilization Plan and Delaware's Race to the Top Plan, or as otherwise approved by the P-20 Council.

educational outcomes for students.

(4) The Department may redisclose those educational records, and the personally identifiable information contained therein, deemed necessary by the Department to accomplish its objective of improving educational outcomes.

Any Department use, compilation, maintenance, protection, distribution, redisclosure, or destruction of LC :

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05/08/2024 04:53 PM educational records, and the personally identifiable information contained therein, must comply with FERPA and its implementing regulations as well as any other pertinent federal or state privacy statutes.

(c) All public and private schools in this State shall allow parents and eligible students to inspect and review the education records of their children or themselves who are, or have been, in attendance at the school.

The right to inspect and review educational records shall must be in accordance with rules and regulations of the Department of Education.

(d) No cause of action or claim for relief, civil or criminal, shall may lie or damages be recoverable against any school officer or employee by reason of such officer's or employee's participation in the formulation of such records or any statements made or of judgments expressed therein concerning a student's academic performance, personal conduct, health, habits, school related activities or potential;

nor by reason of the disclosure of the records or personally identifiable information from the records, nor lack of access thereto, in accordance with subsections (a) through (c) of this section.

SYNOPSIS This Act updates the statute on disclosure of pupil records to ensure compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C.

Sec. 1232g, and improve information sharing between educational institutions and programs operating in this State, including local postsecondary institutions and programs and local education agencies, and the Department of Education ("Department").

Specifically, the Act does the following:

(1) Provides that educational records of students, and personally identifiable information contained therein, may only be disclosed or redisclosed in accordance with FERPA and its implementing regulations.

(2) Allows local education agencies and educational institutions and programs who outsource their data exchange and compliance with reporting requirements to the Department to consider the Department a

school official as defined by FERPA regulations.

This allows educational institutions and programs to disclose to the Department, without parental consent, information necessary for federal and state reporting when there is a legitimate educational interest.

(3) Gives the Department authority to redisclose educational records for the purposes of ensuring the effectiveness of publicly funded programs and improving educational outcomes for students.

Like initial disclosures, redisclosures must comply with FERPA and its implementing regulations.

The Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author:

Senator Sturgeon LC :

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