

**SUBSTITUTE FOR
HOUSE BILL NO. 5140**

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,
8 the department and CEPI each shall post on its website a notice of
9 the information it collects for a pupil's education records. The

1 notice shall include at least an inventory of all pupil data
2 elements collected by the department or CEPI and a description of
3 each pupil data element.

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

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

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

21 (f) If the department or CEPI provides any personally
22 identifiable information concerning a pupil that is collected or
23 created by the department or CEPI as part of the pupil's education
24 records to any person other than the school district, intermediate
25 school district, public school academy, authorizing body,
26 preschool, or postsecondary institution in which the pupil is
27 currently or was formerly enrolled, or the pupil's parent or legal

guardian, then the department or CEPI shall, if the pupil is under 18 years of age or claimed as a dependent on a parent's or legal guardian's federal income tax return, disclose to the pupil's parent or legal guardian upon his or her written request all of the following:

(i) The specific data fields that were disclosed.

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

(iii) The reason for the disclosure.

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

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

(a) A school district, an intermediate school district, a public school academy, an educational management organization, or an authorizing body shall not sell or otherwise provide to a for-

1 profit business entity any personally identifiable information that
2 is part of a pupil's education records. This subdivision does not
3 apply to any of the following situations:

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

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

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

17 **(iv) PROVIDING THE INFORMATION TO AN ELIGIBLE ENTITY UNDER**
18 **SECTION 1139A.**

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

26 (c) Subject to the exemptions under subsection (3), if a
27 school district, intermediate school district, public school

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

7 (i) The specific information that was disclosed.

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

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

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

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

26 (a) A school district, intermediate school district, public
27 school academy, or authorizing body providing the information to

1 the department or CEPI.

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

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

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

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

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

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

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

27 (i) Providing the information as necessary for standardized

1 testing that measures the pupil's academic progress and
2 achievement.

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

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

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

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

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

24 (b) Develop an opt-out form that lists all of the uses or
25 instances under subdivision (a) and allows a parent or legal
26 guardian to elect not to have his or her child's directory
27 information disclosed for 1 or more of these uses.

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

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

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

16 (8) As used in this section:

17 (a) "Authorizing body" means that term as defined in part 6a,
18 6c, or 6e or section 1311b, as applicable.

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

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

24 (d) "Education records" means that term as defined in 34 CFR
25 99.3.

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

House Bill No. 5140 as amended December 13, 2017

1 (F) "ELIGIBLE ENTITY" MEANS THAT TERM AS DEFINED IN SECTION
2 1139A.

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

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

7 SEC. 1139A. (1) SUBJECT TO SUBSECTIONS (2), (3), AND (4), AT
8 LEAST ANNUALLY, THE BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE
9 SCHOOL DISTRICT, OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY,
10 THAT OPERATES ANY OF GRADES 9 TO 12 SHALL PROVIDE ACCESS TO PUPIL
11 DIRECTORY INFORMATION OF ITS PUPILS ENROLLED IN GRADES 9 TO 12 TO A
12 REPRESENTATIVE OF AN ELIGIBLE ENTITY, UPON WRITTEN REQUEST FROM THE
13 ELIGIBLE ENTITY.

14 (2) THE BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL
15 DISTRICT, OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY, SHALL
16 NOT PROVIDE PUPIL DIRECTORY INFORMATION OF A PUPIL UNDER SUBSECTION
17 (1) [UNLESS], BEFORE THE BEGINNING OF A SCHOOL YEAR, THE PARENT OR LEGAL
18 GUARDIAN OF A PUPIL SUBMITS TO THE SCHOOL DISTRICT, INTERMEDIATE
19 SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY A SIGNED, WRITTEN
20 STATEMENT, IN A FORM AND MANNER PRESCRIBED BY THE DEPARTMENT, THAT
21 INDICATES THAT THE PARENT OR LEGAL GUARDIAN [PERMITS] THE
22 PUPIL'S DIRECTORY INFORMATION TO BE PROVIDED TO A REPRESENTATIVE OF
23 AN ELIGIBLE ENTITY. THE BOARD OR BOARD OF DIRECTORS SHALL POST A
24 NOTICE OF THE PROVISIONS OF THIS SUBSECTION ON THE WEBSITE HOMEPAGE
25 OF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC
26 SCHOOL ACADEMY. [A PARENT OR LEGAL GUARDIAN MAY REVOKE PERMISSION GRANTED
UNDER THIS SUBSECTION AT ANY TIME BY SUBMITTING TO THE SCHOOL DISTRICT,
INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY A SIGNED, WRITTEN
STATEMENT, IN A FORM AND MANNER PRESCRIBED BY THE DEPARTMENT.]

27 (3) IF A PUPIL IS AT LEAST AGE 18 OR IS AN EMANCIPATED MINOR,

1 THE PUPIL MAY ACT ON HIS OR HER OWN BEHALF UNDER SUBSECTION (2) .

2 (4) THE BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL
3 DISTRICT, OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY, SHALL
4 NOT PROVIDE A PUPIL'S ADDRESS OR TELEPHONE NUMBER TO AN ELIGIBLE
5 ENTITY UNDER SUBSECTION (1) IF THE PARENT OR LEGAL GUARDIAN OF THE
6 PUPIL HAS PREVIOUSLY REFUSED TO ALLOW THE SCHOOL DISTRICT,
7 INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY TO DESIGNATE
8 THE PUPIL'S ADDRESS OR TELEPHONE NUMBER AS PUPIL DIRECTORY
9 INFORMATION.

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

14 (6) THE BOARD OF A SCHOOL DISTRICT OR INTERMEDIATE SCHOOL
15 DISTRICT, OR BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY, THAT
16 OPERATES ANY OF GRADES 9 TO 12 MAY REQUIRE A REPRESENTATIVE OF AN
17 ELIGIBLE ENTITY TO PAY A FEE, NOT TO EXCEED THE ACTUAL COSTS
18 INCURRED BY THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, OR
19 PUBLIC SCHOOL ACADEMY, FOR MAINTAINING, COPYING, AND MAILING OR
20 OTHERWISE PROVIDING PUPIL DIRECTORY INFORMATION UNDER THIS SECTION.

21 (7) AN ELIGIBLE ENTITY THAT RECEIVES PUPIL DIRECTORY
22 INFORMATION UNDER THIS SECTION SHALL USE THAT INFORMATION ONLY TO
23 PROVIDE INFORMATION TO PUPILS CONCERNING EDUCATIONAL AND CAREER
24 OPPORTUNITIES AVAILABLE AT THE ELIGIBLE ENTITY. AN ELIGIBLE ENTITY
25 THAT RECEIVES PUPIL DIRECTORY INFORMATION UNDER THIS SECTION SHALL
26 NOT RELEASE THAT INFORMATION TO A PERSON THAT IS NOT INVOLVED IN
27 RECRUITING STUDENTS OR EMPLOYEES FOR THE ELIGIBLE ENTITY.

1 (8) AS USED IN THIS SECTION:

2 (A) "APPRENTICESHIP PROGRAM" MEANS A JOINT APPRENTICESHIP AND
3 TRAINING COMMITTEE OR OTHER APPRENTICESHIP PROGRAM REGISTERED WITH
4 THE UNITED STATES DEPARTMENT OF LABOR OFFICE OF APPRENTICESHIP.

5 (B) "ELIGIBLE ENTITY" MEANS MICHIGAN WORKS!, OR A PROPRIETARY
6 SCHOOL, COMMUNITY COLLEGE, COLLEGE, UNIVERSITY, SKILLED TRADE
7 EMPLOYER, APPRENTICESHIP PROGRAM, OR PROFESSIONAL TRADE
8 ASSOCIATION, LOCATED IN THIS STATE.

9 (C) "PROPRIETARY SCHOOL" MEANS A PROPRIETARY SCHOOL LICENSED
10 UNDER THE PROPRIETARY SCHOOLS ACT, 1943 PA 148, MCL 395.101 TO
11 395.103.

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

15 (E) "SKILLED TRADE EMPLOYER" MEANS AN EMPLOYER OR CONSORTIUM
16 OF EMPLOYERS THAT OPERATES A TECHNICAL TRAINING PROGRAM OR AN
17 APPRENTICESHIP PROGRAM FOR CURRENT OR PROSPECTIVE EMPLOYEES.