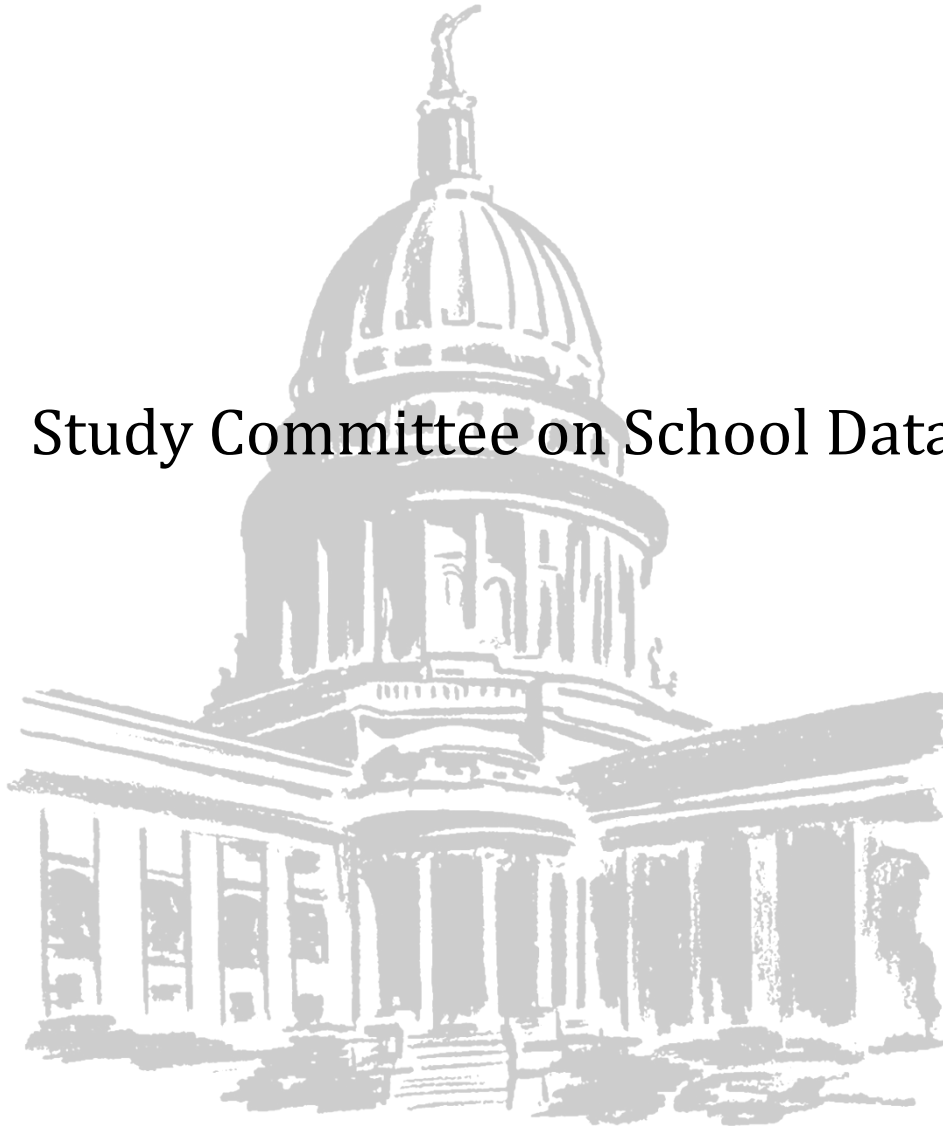


Report to the Joint Legislative Council

Study Committee on School Data



January 6, 2017

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STUDY COMMITTEE ON SCHOOL DATA

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Study Committee on School Data recommends the following bill drafts to the Joint Legislative Council for introduction in the 2017-18 Session of the Legislature, and presents the following general recommendations to the Legislature.

LRB-0377/2, RELATING TO AN INVENTORY OF PUPIL DATA

LRB-0377/2 requires the State Superintendent of Public Instruction to create, maintain, and post a pupil data inventory on the Department of Public Instruction (DPI) website. The inventory must include every distinct type of pupil data collected by DPI from schools and school districts, a definition of the type of pupil data collected, the purpose for collecting the pupil data, and a citation to the specific provision of state or federal law requiring collection of the pupil data. The data inventory must also be updated each time DPI begins collecting an additional type of pupil data, modifies its collection of pupil data, or stops collecting a type of pupil data.

LRB-0445/2, RELATING TO RESPONSIBILITIES OF STATE SUPERINTENDENT RELATED TO PRIVACY AND SECURITY OF PUPIL DATA

LRB-0445/2 establishes duties of the State Superintendent regarding privacy and security of pupil data. The bill draft requires the Superintendent to provide guidance and training to school districts and schools in implementing and administering a data privacy and security plan and in complying with state and federal laws governing privacy and security of pupil data, including parental complaint procedures and other provisions of the federal Family Educational Rights and Privacy Act and the Wisconsin Pupil Records Law. The bill draft also requires the Superintendent to take certain steps to engage with members of the public and governmental officials regarding data privacy and security issues.

RECOMMENDATION – THIRD PARTY VENDOR CONTRACTS

The Joint Legislative Council Study Committee on School Data recommends that the Legislature consider requiring the State Superintendent of Public Instruction to develop guidance for school districts to use when evaluating and entering into contracts with third-party education technology vendors that have access to pupil data, including vendors that operate educational applications or online educational services or websites. The guidance shall include model terms of service and should identify issues for school districts to consider when evaluating a contract, such as, but not limited to: (a) whether the contract permits a vendor to sell student information to another person or entity; (b) whether the contract prohibits a vendor from amassing a marketing profile about a student; and (c) whether the contract permits a vendor to engage in targeted advertising to students or their parents or legal guardians. The guidance should also include a list

of third-party education vendors that offer terms of service that comply with the State Superintendent's model terms of service.

RECOMMENDATION – ELECTRONIC ACCESS

The Joint Legislative Council Study Committee on School Data recommends that the Legislature consider options for encouraging or requiring the State Superintendent of Public Instruction to facilitate access to, and transfer of, electronic student records and data by schools, students, and parents. Such consideration should include reviewing measures adopted in other states to facilitate access to student records, including providing access to a “data backpack” of records maintained in electronic form on behalf of a student.

RECOMMENDATION – PERSONALLY IDENTIFIABLE INFORMATION IMPACT REPORTS

The Joint Legislative Council Study Committee on School Data recommends that the Legislature consider requiring agency personnel to prepare a personally identifiable information impact report for any bill or administrative rule impacting privacy or security of personally identifiable information collected by that agency. The report or reports should be distributed prior to a vote or hearing on the proposal, as is the case with a fiscal estimate under current law.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Study Committee on School Data and appointed the chairperson by an April 18, 2016 mail ballot. The committee was directed to review all student data gathered by DPI and the data security measures that protect student privacy. The committee was further instructed to study whether the data is required by federal law, state statute, or administrative rule and the purposes for which the data is utilized, and to consider developing legislation to limit the types of student data collected by DPI and to improve the security of that data.

Membership of the Study Committee was appointed by a June 10, 2016 mail ballot. The final committee membership consisted of two Senators, four Representatives, and nine public members. A list of committee members is included as **Appendix 3** to this report.

SUMMARY OF MEETINGS

The committee held four meetings on the following dates:

July 12, 2016

August 16, 2016

September 14, 2016

November 17, 2016

At the July 12, 2016 meeting, the Study Committee heard a presentation on data collection and pupil privacy from Jeff Pertl, Laura Pinsonneault, and Sean Cottrell, DPI. The presenters provided an overview of student data collection in Wisconsin, state and federal laws requiring collection of educational data, and protocols of data collection and retention.

The Study Committee also heard a presentation from Sunny Deye, National Conference of State Legislatures, regarding student data privacy efforts in other states. Ms. Deye provided an overview of how data is used by educators and states, and described various state responses to concern over data collection. Finally, the Study Committee heard an additional presentation by Mr. Pertl and Mr. Cottrell, DPI, regarding technology security, including data security practices, processes for secure data storage and transfer, redaction protocols, and researcher access to data.

At the August 16, 2016 meeting, the Study Committee heard a presentation from David Cagigal and Bill Nash, Department of Administration (DOA), Division of Enterprise Technology, regarding DOA's maintenance of data enterprise systems and protocols for protecting and securing data. The committee also received a description from Jeff Pertl and Sean Cottrell, DPI, of materials

prepared by DPI and distributed to members prior to the meeting. The materials included an explanation of data collection practices and requirements, an index of each specific data element collected by DPI, and the source of legal authority for each data element.

The Study Committee also heard a presentation from Brennan McMahon Parton, Data Quality Campaign, regarding state approaches to school data collection, followed by a presentation from Caitriona Fitzgerald, Electronic Privacy Information Center, regarding student data collection and risks for student privacy. The Study Committee heard a panel discussion by all previous presenters at the end of the meeting and participated in a question and answer session.

At the September 14, 2016 meeting, the Study Committee heard a panel presentation by Robert Meyer, Research Professor, Wisconsin Center for Education Research; Eric Camburn, Professor, Department of Educational Leadership and Policy Analysis, University of Wisconsin (UW)-Madison; and Eric Grodsky, Professor, Department of Sociology, UW-Madison, regarding the use and importance of longitudinal student data for conducting research. The committee then heard a presentation by Ben Silberglitt, Founder and Chief Strategy Officer, CedarLabs, LLC, regarding student data policy options for the state or committee to consider. In addition, the committee heard a presentation by Doug Mesecar, Vice President, IO Education, regarding use and treatment of student data by third-party vendor technology platforms and systems.

Following the presentations, the Study Committee discussed Memo No. 1, *Options for Further Study Committee Consideration*, which described the options related to the following: (1) a student data privacy officer; (2) a state data inventory; (3) a restriction on collecting new data elements; (4) a statement of legislative intent; (5) regulation of third-party vendors; (6) retention and disposition of student data; and (7) ownership and access to student data. The members then requested that two bill drafts be prepared, as well as draft recommendation language, for consideration at the next meeting.

At the November 17, 2016 meeting, the Study Committee heard comments from Jeff Pertl, DPI, regarding the two bill drafts and three draft recommendations. The committee then reviewed and discussed the bill drafts and recommendations listed below:

- LRB-0377/1, relating to an inventory of pupil data.
- LRB-0445/1, relating to responsibilities of the State Superintendent related to privacy and security of pupil data.
- Recommendation – Third party vendor contracts.
- Recommendation – Electronic access.
- Recommendation – Pupil data impact reports.

Committee members requested deletions and wording changes to the bill drafts and recommendations. Staff memorialized the requested changes and generated revised language for the committee members to review. The committee unanimously approved the revised recommendations. The committee then voted to approve LRB-0377/1, with the requested revisions, and LRB-0445/1, with the requested revisions.

PART III

RECOMMENDATIONS FOR INTRODUCTION BY THE JOINT LEGISLATIVE COUNCIL

LRB-0377/2, RELATING TO AN INVENTORY OF PUPIL DATA

Background

State law does not currently require DPI to develop or post a data inventory listing the student data elements collected by the department.

Description

LRB-0377/2 requires the State Superintendent of Public Instruction to create, maintain, and post a pupil data inventory on DPI website. The inventory must include every distinct type of pupil data collected by DPI from schools and school districts, a definition of the type of pupil data collected, the purpose for collecting the pupil data, and a citation to the specific state or federal law requiring collection of the pupil data. The data inventory must also be updated each time DPI begins collecting an additional type of pupil data, modifies its collection of pupil data, or stops collecting a type of pupil data.

LRB-0445/2, RELATING TO RESPONSIBILITIES OF STATE SUPERINTENDENT RELATED TO PRIVACY AND SECURITY OF PUPIL DATA

Background

DPI currently employs a “Data Governance Coordinator” with responsibilities relating to technology security and privacy of student data. The position and responsibilities are assigned at the discretion of the State Superintendent, and are not specifically required by state law.

Description

LRB-0445/2 establishes duties of the State Superintendent regarding privacy and security of pupil data. The bill draft requires the Superintendent to provide guidance and training to school districts and schools in implementing and administering a data privacy and security plan and in complying with state and federal laws governing privacy and security of pupil data, including parental complaint procedures and other provisions of the federal Family Educational Rights and Privacy Act and the Wisconsin Pupil Records Law. The bill draft also requires the Superintendent to take certain steps to engage with members of the public and governmental officials regarding data privacy and security issues.

COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following drafts were recommended by the Study Committee on School Data.

STUDY COMMITTEE VOTE

The Study Committee voted by a December 1, 2016 mail ballot, to recommend the following drafts to the Joint Legislative Council for introduction in the 2017-18 Session of the Legislature. The vote on the drafts was as follows:

- **LRB-0377/2**, relating to an inventory of pupil data, passed by a vote of Ayes, 15 (Reps. Thiesfeldt, Bowen, Murphy, and Pope; Sens. Larson and LeMahieu; and Public Members Bruggink, Flaschberger, Greenfield, Hafele, Hoyland, Humphries, Kaukl, Murphy, and Steenwyk); and Noes, 0.
- **LRB-0445/2**, relating to responsibilities of state superintendent related to privacy and security of pupil data, passed by a vote of Ayes, 15 (Reps. Thiesfeldt, Bowen, Murphy, and Pope; Sens. Larson and LeMahieu; and Public Members Bruggink, Flaschberger, Greenfield, Hafele, Hoyland, Humphries, Kaukl, Murphy, and Steenwyk); and Noes, 0.

JOINT LEGISLATIVE COUNCIL

<u>SENATE MEMBERS</u>	<u>ASSEMBLY MEMBERS</u>
Roger Roth, Co-Chair Senate President Appleton	Robert Brooks, Co-Chair Assistant Majority Leader Saukville
Alberta Darling JFC Co-Chair River Hills	Tyler August Speaker Pro Tempore Lake Geneva
Scott Fitzgerald Majority Leader Juneau	Joan Ballweg Markesan
Howard Marklein President Pro Tempore Spring Green	Peter Barca Minority Leader Kenosha
Mark Miller Monona	Dianne Hesselbein Assistant Minority Leader Middleton
Terry Moulton Chippewa Falls	Gordon Hintz JFC Ranking Minority Oshkosh
Jerry Petrowski Marathon	Cory Mason Racine
Fred A. Risser Madison	John Nygren JFC Co-Chair Marinette
Jennifer Shilling Minority Leader La Crosse	John Spiros Marshfield
Lena Taylor JFC Ranking Minority Milwaukee	Jim Steineke Majority Leader Kaukauna
Van Wanggaard Racine	Robin Vos Speaker Rochester

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Terry C. Anderson, Director, Legislative Council Staff, 1 East Main Street, Suite 401, Madison, WI 53703-3382

COMMITTEE LIST

Joint Legislative Council Study Committee on School Data

<p>Chair Jeremy Thiesfeldt, Representative 604 Sunset Lane Fond du Lac, WI 54935</p>	<p>Vice Chair Devin LeMahieu, Senator 21 S 8th Street Oostburg, WI 53070</p>
<p>David Bowen, Representative 4080 N. 21st St. #3 Milwaukee, WI 53209</p>	<p>Kevin Bruggink, District Administrator School District of Oostburg 410 New York Ave. Oostburg, WI 53070</p>
<p>Sally Flaschberger, Lead Advocacy Specialist Disability Rights Wisconsin 6737 W. Washington, Ste. 3230 Milwaukee, WI 53214</p>	<p>Wendy Greenfield, Director of Advancement Saint Lucas Lutheran School 648 E. Dover St. Milwaukee, WI 53207</p>
<p>Nicole Hafele, Teacher Monona Grove High School 1007 Sandpiper Trail Cottage Grove, WI 53527</p>	<p>Kelly Hoyland, Technology Director Menomonie School District E6447 836th Ave. Colfax, WI 54730</p>
<p>John Humphries, Director of Pupil Services/Acting/Substitute Principal Dodgeville School District 121 North Grove Street Mount Horeb, WI 53572</p>	<p>Kim Kaukl, Executive Director Wisconsin Rural Schools Alliance 1755 Oakwood Circle Plain, WI 53577</p>
<p>Chris Larson, Senator 3261 S. Herman Street Milwaukee, WI 53207</p>	<p>David Murphy, Representative 1777 Ivy Lane Greenville, WI 54942</p>
<p>Margaret Murphy, Member Neenah School Board 517 Maple Lane Neenah, WI 54956</p>	<p>Sondy Pope, Representative 317 Nesheim Trail Mt. Horeb, WI 53572</p>
<p>Ann Steenwyk, Principal Sheboygan County Christian School 929 Greenfield Ave.. Sheboygan, WI 53081</p>	

STUDY ASSIGNMENT: The Study Committee is directed to review all student data gathered by the Department of Public Instruction (DPI) and the data security measures that protect student privacy. The committee will study whether the data is required by federal law, state statute, or administrative rule and the purposes for which the data is utilized, and consider developing legislation to limit the types of student data collected by DPI and to improve the security of that data.

15 MEMBERS: 4 Representatives; 2 Senators; and 9 Public Members.

LEGISLATIVE COUNCIL STAFF: Katie Bender-Olson, Senior Staff Attorney, Brian Larson, Staff Attorney, and Kelly Mautz, Support Staff.

COMMITTEE MATERIALS LIST

[Copies of documents are available at www.legis.wisconsin.gov/lc]

July 12, 2016 Meeting

- Presentation by the Department of Public Instruction (DPI) (July 12, 2016)
- Handout, Student Data Access, DPI
- Handout, Confidentiality of Individual Pupil Data and Data Redaction, DPI
- Handout, WISEdash (FOR DISTRICTS) Dropout Early Warning System (DEWS) Dashboards, DPI
- Presentation, State Legislative Activity on Student Data Privacy, by Sunny Deye, Program Principal, National Conference of State Legislatures (July 12, 2016)
- Report, Protecting Student Privacy in a Networked World, Connected Learning: A Primer for State Policymakers, NCSL
- Handout, Schools' Data Dilemma, by Sunny Deye, Program Principal, NCSL
- Staff Brief 2016-01, School Data (July 5, 2016)
- Minutes of the July 12, 2016 meeting

August 16, 2016 Meeting

- Data Inventory distributed by the Department of Public Instruction
- Student Data Fact Sheet distributed by the Department of Public Instruction
- Testimony and Statement of the Record of Caitriona Fitzgerald, State Policy Coordinator, Electronic Privacy Information Center (August 16, 2016)
- Memorandum, Examples of "student data inventories" published and made publicly available in other states, Sunny Deye, National Conference of State Legislatures (July 25, 2016)
- Presentation, Make Data Work for Students, Strategies for Using Data and Keeping it Secure, by Brennan McMahon Parton, Associate Director, State Policy and Advocacy, Data Quality Campaign (August 16, 2016)
- Minutes of the August 16, 2016 meeting

September 14, 2016

- DPI Data Incident Response Procedure, Department of Public Instruction (July 7, 2013)
- DPI Data Incident Response Plan, Department of Public Instruction (July 5, 2013)

- Procedures Guidebook, Department of Public Instruction
- Information Technology (IT) Security Policy Handbook, Division of Enterprise Technology, Department of Administration
- Wisconsin Department of Public Instruction -- Office of Student Assessment 2016 Vendor-Based Reporting Information distributed by the Department of Public Instruction
- Memo No. 1, Options for Further Study Committee Consideration (September 7, 2016)
- Presentation, IO Education, Improving Educational Outcomes, Doug Mesecar, Vice President, Strategic Partnerships, IO Education (September 14, 2016)
- Presentation, Student Data Policy: Ideas and Considerations, Ben Silberglitt, Ph.D., Cedarlabs
- Minutes of the September 14, 2016 meeting

November 17, 2016 Meeting

- LRB-0377/1, relating to an inventory of pupil data
- LRB-0445/1, relating to responsibilities of state superintendent related to privacy and security of pupil data
- Recommendation -- Third-party vendor contracts
- Recommendation -- Electronic access
- Recommendation -- Pupil data impact reports
- Final Recommendation -- Third-party vendor contracts
- Final Recommendation -- Electronic access
- Final Recommendation -- Pupil data impact reports
- Minutes of the November 17, 2016 meeting

December 1, 2016 Mail Ballot

- LRB-0377/2, relating to an inventory of pupil data
- LRB-0445/2, relating to responsibilities of state superintendent related to privacy and security of pupil data
- Mail Ballot
- Results of December 1, 2016 Mail Ballot