



## Changes to Wisconsin Pupil Records Law Permit Greater Disclosure to County Departments

School district officials often need to interact with county social service or human services departments (county department) to serve certain students within the school district. This interaction often involves sharing information about the student with the county department. However, district officials are often concerned about disclosing confidential student information when it is not authorized under state or federal law. The Wisconsin Legislature recently revised the state pupil records law (Wis. Stat. s. 118.125) to facilitate exchange of such records from the district to the relevant county department, in a manner consistent with state and federal law. This FYI will briefly describe the new law and its impact on school district practices and policies.

### A. Disclosures to Certain Caseworkers Upon Request

2015 Wisconsin Act 161 (Act 161) now permits (but does not require) school districts to share pupil records in certain instances. In particular, Act 161 permits school districts, upon receiving a request for records, to disclose pupil records that are pertinent to addressing a pupil's educational needs to a caseworker or other representative of the Department of Children and Families (DCF), a county department, or a tribal organization, that is legally responsible for the care and protection of the pupil. The caseworker or other representative must be authorized by the DCF, county department, or tribal organization to access the pupil's case plan. The law is not clear on whether school officials must verify that the representative is authorized to access the plan, but it is advisable for school officials to make a reasonable effort to verify such authorization when records are requested.

The caseworker or other representative who receives the records is restricted from further disclosing these records or personally identifiable information contained in those records, unless one of three specific exceptions applies. One exception allows disclosure by the caseworker or other representative to a person who is engaged in addressing the pupil's educational needs; who is authorized by the DCF, county department, or tribal organization to receive the disclosure; and to whom disclosure is authorized under state or tribal law. A second exception allows disclosure, upon request, to any Wisconsin or United States court that needs to review those records or that information for the purpose of addressing the educational needs of a pupil who is the subject of the proceeding in that court. The final exception allows disclosure (in response to an order of a court conducting certain proceedings under chapters 48 or 938 or in response to any subpoena issued in such a proceeding) to any person who is engaged in addressing the educational needs of the pupil and who is authorized to receive that disclosure under that order or subpoena. Under this third exception, before complying with the order or subpoena, the DCF, county department, or tribal organization that is issued an order or subpoena must provide notice of the order or subpoena to the pupil's parent or guardian, except in certain circumstances.

## **B. School Board / County Department Memorandum of Understanding**

Act 161 allows (but does not require) a school board to enter into a memorandum of understanding (MOU) with a county social services department or tribal organization that permits the school board to disclose information contained in pupil records (consistent with the terms set forth above) in cases in which the pupil's parents or guardian (or the pupil, if the pupil is an adult) does not grant permission for such disclosure. Under any MOU, the county department or tribal organization is prohibited from further disclosing such records or information contained in the records, unless one of the exceptions set forth in paragraph A applies.

## **C. DPI / DCF Memorandum of Understanding**

Act 161 also authorizes (but does not require) the Department of Public Instruction (DPI) and the DCF to enter into an MOU. The law permits DPI to disclose information contained in pupil records that is pertinent to addressing a pupil's educational needs to a caseworker or other representative of the DCF, a county department, or a tribal organization that is legally responsible for the care and protection of the pupil. The caseworker or other representative must be authorized by the DCF, county department, or tribal organization to access the pupil's case plan. Under any MOU, the DCF, county department, or tribal organization is prohibited from further disclosing such records or information contained in the records, unless authorized by one of the exceptions set forth in paragraph A.

## **D. Federal Law Contains Similar Provision**

Act 161 appears to be based on a similar federal law that was enacted in 2013. The Uninterrupted Scholars Act (USA) made significant changes to the Family Educational Rights and Privacy Act (FERPA). FERPA is the federal law that protects the privacy of student education records. Schools must comply with FERPA in order to receive funding from certain federal programs and may not disclose a student's education records to a third party unless a parent or guardian (or adult student) gives consent. However, like the state pupil records law, FERPA contains a number of important exceptions. The USA amended FERPA to include an exception related to the disclosure of records to child welfare agencies.

As amended, FERPA generally states (similar to paragraph A above) that school districts may disclose education records to an agency caseworker or other representative of a state or local child welfare agency, or tribal organization, who has the right to access a student's case plan, when that agency or organization is legally responsible for the care and protection of the student. Like Act 161, FERPA also restricts redisclosure of those records. Specifically, FERPA prohibits disclosure of student records or personally identifiable information of the student contained in such records, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure. Such disclosure must also be consistent with the state or tribal laws applicable to protecting the confidentiality of student records.

## **E. Impact for School Districts**

There are several considerations for school district officials in light of this change in the law. First, school district officials should ensure that the district's policy related to student records incorporates the latest changes to state pupil records law in Act 161. That is, the changes in Act 161 should trigger a review of the district's student record policy.

Second, school district officials should consider whether they will want to adopt an MOU with a county social services department, consistent with paragraph B above. An MOU is not required under the law; the new law permits such disclosure even without an MOU. However, an MOU may be beneficial to a district in streamlining future exchanges of information between the school district and the county department. An MOU could also serve to establish a process for the disclosure of records from the county department to the school district.

Third, school district officials will need to make sure that any disclosures related to student records are consistent with both state and federal law. While many provisions of Wisconsin pupil records law mirror FERPA, some sections differ and require additional analysis to ensure that a district is complying with both laws. Further, other provisions of state law (such as provisions within chapter 48) may apply to disclosures between a school district and a county department, so districts should review all applicable state law and consult with legal counsel when necessary.

## F. Conclusion

School districts need to be aware of the changes to the state pupil records law as a result of Act 161 and should take all necessary steps to comply with the new law, including reviewing and amending school board policies. Act 161 appears to bring the state pupil records law more closely in alignment with FERPA. However, significant differences still exist between the two laws that districts should be aware of in order to ensure compliance with both laws.

---

■ Michael J. Julka	(608) 286-7238	■ Douglas E. Witte	(608) 283-7529	■ Rhonda R. Hazen	(608) 283-1724
■ James K. Ruhly	(608) 283-1738	■ Steven C. Zach	(608) 283-1736	■ M. Tess O'Brien-Heinzen	(608) 283-1798
■ Eileen A. Brownlee	(608) 822-3251	■ Frank C. Sutherland	(608) 286-7243	■ Andrew N. DeClercq	(608) 283-1734
■ JoAnn M. Hart	(608) 286-7162	■ Richard F. Verstegen	(608) 286-7233		

---

*Disclaimer: Boardman & Clark LLP provides this material as information about legal issues. It does not offer legal advice with respect to particular situations and does not purport that this newsletter is a complete treatment of the legal issues surrounding any topic. Because your situation may differ from those described in this Newsletter, you should not rely solely on this information in making legal decisions. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.*