

OPEN MEETINGS: MINUTES MUST PROTECT FAMILY EDUCATIONAL RIGHTS & PRIVACY

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House Bill 5198 (Substitute H-3)
Sponsor: Rep. Mike Nofs
Committee: Government Operations
First Analysis (4-1-04)

BRIEF SUMMARY: The bill would amend the Open Meetings Act to prohibit a public body from disclosing in its minutes of meetings any information where such a disclosure would violate the federal Family Educational Rights and Privacy Act (FERPA).

FISCAL IMPACT: There is no information at present. However, as noted elsewhere, the U.S. Department of Education has written a letter to state education officials warning that the state “must ensure that all local school boards in Michigan comply with FERPA regarding the release of personally identifiable student information in board minutes so that the State may continue receiving Federal education funds.”

THE APPARENT PROBLEM:

Generally speaking, under the federal Family Educational Rights and Privacy Act (FERPA) schools must have the written permission from a parent or eligible student before releasing information from a student’s record. Michigan’s Freedom of Information Act includes a provision that exempts disclosure of such information if that disclosure would be in violation of FERPA (MCL 15.243). There is, however, some confusion on the part of school districts over how the federal law applies to the meetings of local boards of education under the Open Meetings Act, as that act does not contain a similar provision exempting disclosure of student information if such disclosure would be a violation of FERPA.

Under Michigan case law (limited as it may be), local boards of education must include identifying information of students in the minutes of its meetings, even if such information could be an invasion of the students’ privacy. A 1980 attorney general’s opinion (OAG No. 5632) addressing the question of whether the disclosure of disciplinary action taken by a board of education constitutes an unwarranted invasion of privacy stated, “[p]resently, there is no statutory authority which permits information which might constitute a clearly unwarranted invasion of an individual’s privacy to be expunged from the minutes of a public body before it is furnished to the public. Until it does so, [a] board of education must furnish copies of its minutes without editing.” The state court of appeals, in *Palladium Publishing v. River Valley School District*, 115 Mich App 490 (1982), confirmed the opinion of the attorney general, stating, “[i]t must follow that in order for the board of education to act upon the suspension of a student, the minutes of the board of education meeting must contain the student’s name.”

Recently, the Roseville Board of Education conducted a student expulsion hearing and, in accordance with state law, published minutes of the meeting that identified the student by name, the charge against the student, and the action taken by the board. In response, the Family Policy Compliance Office of the U.S. Department of Education wrote a letter to state schools superintendent Tom Watkins stating that actions of local school boards consistent with OAG No. 5632 and *Palladium Publishing v. River Valley School District* violate FERPA.

The letter, dated August 13, 2003 and available publicly on the U.S. Department of Education's web site, states, "local Michigan school boards violate FERPA to the extent that they have a policy or practice of releasing or otherwise making public board meeting minutes of a disciplinary proceeding that contain the name of a student, a student number, or other personally identifiable information, without the prior written consent of the student's parent. Assuming for purposes of this determination that *all* local school boards follow the Michigan Attorney General's 1980 opinion in this matter, the resulting systemwide FERPA violation would also constitute a breach of the assurances in the consolidated application submitted by your agency to receive Federal funds. Accordingly, the State must ensure that all local school boards in Michigan comply with FERPA regarding the release of personally identifiable student information in board minutes so that the State may continue receiving Federal education funds." Legislation has been introduced to correct an apparent 20-year oversight in state law.

THE CONTENT OF THE BILL:

The bill would amend the Open Meetings Act to prohibit a public body from including in its minutes of a meeting, or in information accompanying the minutes, information that if released would prevent the public body from complying with the federal Family Educational Rights and Privacy Act, a section of federal law designed to protect the privacy of a student's educational records. (The bill cites this as Section 444 of Subpart 4 of Part C of the General Education Provisions Act, 20 USC 1232g)

The bill also contains a change in the language of the provision regarding when corrections to minutes must be made. Currently, a public body must make corrections "not later than the next meeting to which the minutes refer." The bill would say corrections must be made at the next meeting. Current language requires that corrected minutes be made available "no later than the next subsequent meeting after correction." The new language would require them to be available "at or before the next subsequent meeting." Updated language would also be provided for when minutes are to be available to the public.

MCL 15.269

ARGUMENTS:

For:

The bill is necessary to ensure that local boards are acting in accordance with the federal Family Educational Rights and Privacy Act, and to bring some consistency between state and federal law regarding the disclosure of private information of students in the minutes of the meetings of local boards of education. If local school boards act in accordance with a state court of appeals decision and attorney general's opinion from the early 1980's, they are in clear violation of the federal law. A violation of that law can result in a withholding of federal funding, the issuance of a cease and desist order, and the recovery of money already received. As noted elsewhere, the Freedom of Information Act already contains an exemption of this kind of information. The result, moreover, will be more protection for Michigan families and students.

POSITIONS:

There are no positions at present.

Legislative Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.