



Senate Fiscal Agency  
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BILL ANALYSIS



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House Bill 5198 (Substitute H-3 as reported without amendment)  
Sponsor: Representative Mike Nofs  
House Committee: Government Operations  
Senate Committee: Education

Date Completed: 7-27-04

### **RATIONALE**

According to the Michigan Department of Education (MDE), the Department was notified in August 2003 by the U.S. Department of Education that Michigan law conflicts with the Federal Family Educational Rights and Privacy Act (FERPA). A conflict arises when local school boards decide on disciplinary action against a student at a public board meeting and then publish the student's name in the board minutes. Making the decision to expel or suspend a student at a public meeting adheres to a requirement in the Open Meetings Act that, "All decisions of a public body shall be made a meeting open to the public," (MCL 15.263). Publishing the student's name in the meeting minutes complies with a 1982 Michigan Court of Appeals ruling, *Palladium Publishing Co. v River Valley School District* (115 Mich App 490), and with a 1980 Michigan Attorney General Opinion (Opinion No. 5632). The Federal Act, however, prohibits an educational agency from having a policy or practice of releasing a student's education records, or personally identifiable information from these records, without a parent's written consent. According to the MDE, the minutes of a local school board meeting that contain the name of a student and the results of a disciplinary proceeding constitute an "education record" under FERPA.

### **CONTENT**

The bill would amend the Open Meetings Act to prohibit a public body from including in the minutes of its meetings any personally identifiable information that, if released, would be in violation of the Federal Family Educational Rights and Privacy Act.

The bill also would require a public body to make any corrections of its minutes at the next meeting after the meeting to which the minutes refer. Currently, corrections must be made no later than the next meeting.

MCL 15.269

### **BACKGROUND**

According to the U.S. Department of Education, FERPA (20 USC 1232g) protects the privacy of student education records and applies to all schools that receive funds under an applicable program of that Department. The Act gives parents certain rights with respect to their children's education records. The rights are transferred to the student when he or she reaches the age of 18 or attends a school beyond the high school level.

The rights under FERPA include the right to request a school to correct a record that a parent or eligible student believes is inaccurate or misleading, and the right to place a statement in the record if the school decides not to amend the record after a hearing. In addition, schools generally must have written permission from a parent or eligible student in order to release any information from a student's record, although schools may disclose records to specified parties without consent. Schools also may disclose, without consent, "directory" information, such as a student's name, date and place of birth, and dates of attendance, but first must inform parents and eligible students and give them a

reasonable amount of time to request that directory information not be released.

Schools are required to give parents and eligible students annual notice of their rights under FERPA.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

It is critical to protect the privacy rights of students, most of whom are under the age of majority. By explicitly prohibiting a school board from including in its meeting minutes any personally identifiable information that would violate FERPA, the bill could provide a measure of protection for an expelled or suspended student who did not wish to have his or her name published in a local newspaper. Instead of the student's actual name or identifiable information, a pseudonym could be used in the meeting minutes so that a board would be in compliance with both the Open Meetings Act and FERPA.

Reportedly, many school boards are torn between complying with Federal law and following State case law and an Attorney General Opinion. The Freedom of Information Act contains a provision (MCL 15.243) that exempts disclosure of information that would violate of FERPA; including the same language in the Open Meetings Act would clarify the matter for school districts, which risk losing Federal funding if they do not adhere to FERPA.

Legislative Analyst: Claire Layman

## **FISCAL IMPACT**

According to the MDA, there is significant potential budgetary impact, of as much as \$1.2 billion, if the State does not come into compliance with FERPA. This would apply at the State as well as the local levels.

Fiscal Analyst: Kathryn Summers-Coty

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.