

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 2, 2008
POSITION: Oppose unless amended

BILL NUMBER: SB 1425
AUTHOR: D. Steinberg

BILL SUMMARY: Pupil Data

This bill would require the State Department of Education (SDE) to establish an education data team to review and respond to all data requests and establish data access regulations. Additionally, this bill would require the Legislative Analyst's Office (LAO) convene a workgroup to make recommendations related to pupil and education data use and require the California Research Bureau prepare a report on other states' approaches to balancing the benefits of increased access to individually identifiable pupil data and the increased risk of loss of privacy.

FISCAL SUMMARY

Finance estimates the annual costs of this bill to be at least \$1.5 million for staffing costs related to the review of data requests, based on our understanding that the state of Texas has approximately ten staff that process education data requests from its data system. Further, we estimate up to \$500,000 General Fund cost would result from staffing the committee, adopting regulations, and performing the remaining administrative workload proposed. However, we note the bill requires the SDE to redirect staff and absorb the required activities within existing resources. At this time, we are unsure of SDE's ability to absorb the workload within existing resources. Additionally the California Research Bureau of the California State Library would incur General Fund costs of an estimated \$100,000 for administrative and staffing costs related to developing the required report.

The bill also proposes the creation of "any reasonable fees or charges that may be imposed to cover costs of responding to time-intensive requests". However, this would not address proposals that are not time intensive by themselves but may be every numerous.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the March 27, 2008 version include the following significant amendments which do not change our position:

- Require SDE, within existing resources, and the renamed institutional review board (now the education data team) to comply with the Federal Education Rights and Privacy Act when releasing individual data.
Direct the LAO to convene a working group to make recommendations related to education and pupil data as well as access to data from within the California Longitudinal Pupil Achievement Data System (Calpads), and report recommendations to the Legislature by June 1, 2009.
Require the California Research Bureau of the California State Library to submit a report on other states' approaches to balancing the benefits of increased access to individually identifiable pupil data and the increased risk of loss of privacy.

Analyst/Principal Date Program Budget Manager Date
(0333) M. Aguilera Jeannie Oropeza

Department Deputy Director Date

Governor's Office: By: Date: Position Approved
Position Disapproved

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

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COMMENTS

Finance is opposed to this bill in its current form for the following reasons, unless it is amended to address the specified policy concerns:

- Finance estimates General Fund costs pressure of at least \$2 million over time (as staff would be phased in on a workload basis) in SDE administrative costs to implement this bill. These costs could be offset to some unknown degree from proposed new fees for responding to time-intensive requests. Additionally, Finance estimates General Fund costs of \$100,000 for the California Research Bureau of the California State Library to develop the required report. Finance believes the California Research Bureau of the California State Library should develop the requested report within existing resources.
- We question whether SDE should solely have representation on the proposed team for determining what entities or individuals should have access to data.
- The bill may inadvertently allow for the inappropriate public release of personally identifiable data.
- The State Board of Education should have the authority to consider and decide final data access appeals for matters initially presented to and denied by the education data team.

ANALYSIS

A. Programmatic Analysis

Calpads, upon implementation, will track individual student enrollment history, student academic performance as well as other data elements over time. System goals pursuant to Chapter 1002, Statutes of 2002 (SB 1453, Alpert), are to provide school districts and the State Department of Education to data necessary to: (1) comply with federal No Child Left Behind reporting requirements; (2) provide a better means of evaluating educational progress and investments over time; (3) provide LEAs information that can be used to improve pupil achievement; and (4) provide an efficient, flexible, and secure means of maintaining longitudinal statewide pupil-level data.

Current law provides for the electronic transfer of student records between LEAs through the State Reporting and Records Transfer System, which is a part of the California School Information Services program. It is our understanding that this functionality will not be impaired as a result of Calpads implementation.

Specifically, this bill would require: 1) SDE to establish (using existing staff) an education data team by July of 2009 to review and respond to all data requests; 2) the proposed team to enter into a signed agreement with the Committee for the Protection of Human Subjects for the review and release of individually identifiable data to qualified researchers and other state and local agencies; 3) SDE to adopt regulations to: (a) establish criteria for the release of data; (b) develop a fee system to cover associated costs; (c) control data use; and (d) provide LEAs the ability to transfer data within Calpads from one local education agency to another; 4) whomever releases data in violation of the law to be held responsible for the action under civil penalty; 5) the LAO to convene a workgroup comprised of members of the education and judiciary committees of the Legislature and other interested parties, to make recommendations related to pupil and education data; and 6) the California Research Bureau to prepare a report on other states approaches to balancing the benefits of increased access to individually identifiable pupil data and the increased risk of loss of privacy.

Finance is opposed to this bill in its current form, unless it is amended to address the specified policy concerns identified previously in the "Comments" section of this analysis.

B. Fiscal Analysis

Finance estimates the annual cost pressure of this bill to be at least \$ 2 million, depending on the actual workload and staffing levels needed for implementation over time. These costs are based on our understanding that the state of Texas has approximately ten staff that process education data requests from its data system (staffing costs are approximately \$100,000 per position), \$1.5 million for processing education data requests results. The remaining amount of our estimate (up to \$500,000) depends on the actual workload requirements and actions of the committee, and would come from staffing the committee, adopting regulations, and performing the remaining administrative workload proposed. However, we note the bill

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)
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requires the SDE to redirect staff and absorb the required activities within existing resources. At this time, we are unsure of SDE's ability to absorb the workload within existing resources. Additionally the California Research Bureau of the California State Library would incur General Fund costs of an estimated \$100,000 for administrative and staffing costs related to developing the required report.

The bill also proposes the creation of "any reasonable fees or charges that may be imposed to cover costs of responding to time-intensive requests". It is unknown how much revenue would be generated under the proposed policy (any fees received would offset the General Fund costs shown in this analysis). However, this would not address proposals that are not time intensive by themselves but may be every numerous.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP	2008-2009		2009-2010		2010-2011		
RV	98	FC	FC	FC	FC				
6110/Dept of Educ	SO	NoCost pressure of \$2 million annually.....						0001
6120/CA St Libry	SO	No	C	\$100		--		-- 0001	

Suggested Amendments
SB 1425 (As amended July 2, 2008)

The Department of Finance's suggested mock-up for this bill is as follows:

SECTION 1. Section 1798.24 of the Civil Code is amended to read:

1798.24. No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

- (a) To the individual to whom the information pertains.
- (b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.
- (c) To the duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains.
- (d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.
- (e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.
- (f) To a governmental entity when required by state or federal law.
- (g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).
- (h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.
- (i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.
- (j) To the State Archives as a record that has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.
- (k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.
- (l) To any person pursuant to a search warrant.
- (m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.
- (n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing.

(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.

(t) (1) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA) or an institutional review board, as authorized in paragraphs (4) and (5). The approval required under this subdivision shall include a review and determination that all the following criteria have been satisfied:

(A) The researcher has provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The researcher has provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the personal information for the research project and has provided a long-term plan sufficient to protect the confidentiality of that information.

(C) The researcher has provided sufficient written assurances that the personal information will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project.

(2) The CPHS or institutional review board shall, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting personal information held in agency databases:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research project.

(C) Permit access only to the minimum necessary personal information needed for the research project.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can still be conducted without social security numbers.

(E) If feasible, and if cost, time, and technical expertise

permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.

(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher, including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

(4) The CPHS may enter into written agreements to enable other institutional review boards to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision are satisfied.

(5) Notwithstanding paragraph (4), the CPHS shall enter into a written agreement with the institutional review board established pursuant to Section 49079.5 of the Education Code. The agreement shall authorize, *commencing on July 1, 2009, or the date upon which the written agreement is executed, whichever is later*, that board to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision and the act specified in paragraph (1) of subdivision (a) of Section 49079.5 of the Education Code are satisfied.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

(v) Pursuant to Section 1909, 8009, or 18396 of the Financial Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

SEC. 2. Section 49079.5 is added to the Education Code, to read:

49079.5. (a) The Legislature recognizes that a longitudinal pupil data system could provide direct and tangible benefits to pupils, educators, policymakers, and the public. It is the intent of the Legislature, in enacting this section, to accomplish the following:

~~— (1) Comply with the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and related regulations (hereafter FERPA) and the California Constitution in order to protect pupil rights and privacy.—~~

~~— (2) Create an environment in which the department, or any other entity that administers the California Longitudinal Pupil Achievement Data System (CALPADS), and CALPADS, become resources rather than burdens for local educational agencies.—~~

~~— (3)—~~

(1) Comply with the United States Constitution and all applicable federal laws, including the Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec. 1232g) (FERPA) and its implementing regulations (34 C.F.R. 99).

(2) Comply with the United States Constitution and all applicable state laws and their implementing regulations, including, but not limited to, Section 1798.24 of the Civil Code and subdivision (c) of Section 10601.5 of this code.

(3) Create an environment in which ~~the department~~ the administering entity and the California Longitudinal Pupil Achievement Data System (CALPADS) become resources rather than burdens for local educational agencies.

(4) Promote a culture of continuous improvement through collaboration and informed decisionmaking at the classroom, school, district, state, and policymaker level.

~~— (4) Minimize the anticipated workload increase on the department, or any other entity that administers CALPADS, that would be generated by an increased number of data requests as—~~

(5) Minimize the anticipated workload increase on ~~the department~~ the administering entity.that may be generated by an increased number of data requests as CALPADS becomes

operational, by establishing clear guidance on data access and an efficient process for responding to requests for access.

~~(5) Make pupil data available to researchers from nonprofit organizations while appropriately protecting the privacy of individual pupils.~~

~~(b) To the extent permissible under FERPA, the department, or any other entity that administers CALPADS, shall act on behalf~~

(6) Pursuant to FERPA and as defined in Section 1798.24 of the Civil Code, make non-identifiable individual pupil data available to qualified researchers from nonprofit organizations while appropriately protecting the privacy of individual pupils.

(b) Commencing on July 1, 2009, and to the extent possible under FERPA, its implementing regulations, and Section 1798.2 of the Civil Code, ~~the department~~ the administering entity shall may act on behalf of local educational agencies under FERPA, including providing access to non-identifiable individual pupil data and protecting the security of individual pupils' data.

~~(c) To the extent permissible under FERPA, the department, or any other entity that administers CALPADS, on behalf of local educational agencies, may release data to researchers from nonprofit organizations.~~

~~(d) The department or any other entity that administers CALPADS shall establish an institutional review board to review and respond to all requests for aggregate and individually identifiable data, and shall redirect department personnel for the institutional review board rather than establishing new positions.~~

(c) Commencing on July 1, 2009, and to the extent possible under FERPA and its implementing regulations, ~~the department~~ the administering entity, on behalf of local educational agencies, may release non-identifiable individual pupil data to qualified researchers from nonprofit organizations, pursuant to subdivision (t) of Section 1798.24 of the Civil Code.

(d) No earlier than July 1, 2009, ~~the department~~ the administering entity shall establish an education data team within its staff to act as an institutional review board pursuant to subdivision (t) of Section 1798.24 of the Civil Code, and to review and respond to all requests for aggregated and non-identifiable individual pupil data. ~~The department~~ The administering entity. shall redirect department personnel for the purposes of the education data team rather than establish new positions.

(1) Pursuant to subdivision (t) of Section 1798.24 of the Civil Code, the ~~institutional review board~~ education data team shall enter into a signed agreement with the Committee for the Protection of Human Subjects for the California Health and Human Services Agency to enable the ~~institutional review board~~ education data team to provide the data security approvals required by that section. The agreement shall authorize the ~~institutional review board~~ education data team to release non-identifiable individual pupil individually identifiable data to qualified researchers and other state and local agencies, as defined and permitted under state law ~~and FERPA~~ federal law.

(2) ~~The department~~ The administering entity shall commence preparations for the creation of the ~~institutional review board~~ education data team at least one month before the CALPADS pilot program is scheduled to begin.

(3) No later than one month before the CALPADS pilot program is scheduled to end, ~~the department~~ the administering entity shall adopt regulations for the ~~institutional review board~~ education data team that shall include, but not be limited to, all of the following:

(A) Processes for all of the following:

(i) Application for access to data.

(ii) Response to applications for access to data, including timelines.

(iii) Appeal of denials for access to data. Final decisions on appeals shall be made by the State Board of Education.

(B) Criteria to be used for approving the release of data, including, but not limited to all of the following :

(i) The release of data to researchers from nonprofit organizations, pursuant to FERPA and subdivision (t) of Section 1798.24 of the Civil Code, that are conducting research for the purpose of improving instruction to pupils.

(ii) Limitations on data released, including, but not limited to,

releasing to researchers only data necessary to meet research objectives.

(iii) Requiring an agreement by applicants to comply with *state and federal* privacy and disclosure laws and regulations, and existing laws regarding data control and security.

(C) Any reasonable fees or charges that may be imposed upon applicants to cover costs of responding to time-intensive requests.

(D) Rules for data recipients regarding data control and destruction of data after use, to guard against any misuse of data, including third-party transfer.

(e) Local educational agencies may access data via CALPADS concerning pupils enrolled in their school or transferring to their school from another school.

(f) In order to promote a culture of collaboration and data analysis and to increase the identification and sharing of effective practices, local educational agencies may share non-identifiable individual pupil data with each other via CALPADS to the extent permissible under state law and federal law FERPA.—

~~—(g) — If the department releases data pursuant to this section, and that release is in violation of either FERPA or subdivision (t) of Section 1798.24 of the Civil Code, the department is responsible for the violation. If a local educational agency releases data pursuant to this section and that release is in violation of FERPA, the local educational agency is responsible for the violation. This subdivision does not limit the liability of a researcher who obtains data pursuant to this section and who releases that data in violation of either FERPA or subdivision (t) of Section 1798.24 of the Civil Code.—~~
federal law.

(g) ~~The department~~ The administering entity is responsible for data management decisions for the data under its jurisdiction. ~~The department~~ The administering entity, rather than a local educational agency, shall be liable for its decisions relating to the management of data under its control according to applicable provisions of law. If ~~the department~~ the administering entity and a local educational agency participate jointly in the management of data, both ~~the department~~ the administering entity and the local educational agency shall be liable to the extent of their involvement according to applicable provisions of law. This subdivision does not limit the liability of a researcher who obtains data pursuant to this section and who releases that data in violation of either FERPA or its implementing regulations, or subdivision (t) of Section 1798.24 of the Civil Code.

(h) ~~The department~~ The administering entity shall perform the duties specified in this section with its existing resources.

SEC. 3. Section 49079.6 is added to the Education Code, to read:

~~49079.6. (a) The Legislative Analyst's Office shall convene a staff working group including bipartisan representation from the appropriate education and judiciary committees of the Legislature, as well as other interested parties.~~

~~(b) The working group shall make recommendations related to the ability of the state to collect, transfer, and use pupil record information and other educational data, including, but not limited to, issues related to providing access to CALPADS data with respect to the interactions between state and federal law on the issue of protection of pupil privacy.~~

~~(c) The office shall coordinate the efforts of this working group with those of any other working group convened pursuant to law for the purpose of examining issues related to education data governance.~~

~~(d) The office shall report the recommendations of the working group convened pursuant to this section to the Legislature on or before June 1, 2009.—~~

SEC. 4. Section 49079.7 is added to the Education Code, to read:

49079.7. On or before June 1, 2009, the California Research Bureau of the California State Library shall, within existing resources, prepare and submit a report to the Legislature providing a review of existing literature, research, litigation, and other materials and analyzing other states' approaches to balancing the benefits of increased access to non-identifiable individual ~~individually identifiable~~ pupil data and other education data against the increased risk of loss of privacy.