

1 A bill to be entitled
 2 An act relating to public records; providing an
 3 exemption from public records requirements for student
 4 learning growth data that is educator-specific and
 5 personally identifies an educator which is held by the
 6 Department of Education or a school district for use
 7 in an evaluation of an educator; providing for limited
 8 duration of the exemption; defining the term
 9 "educator"; providing for retroactive effect of the
 10 exemption; authorizing disclosure of such student
 11 learning growth data under specified conditions;
 12 providing for future review and repeal of the
 13 exemption; providing a statement of public necessity;
 14 providing an effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Paragraph (a) of subsection (3) of section
 19 1012.31, Florida Statutes, is amended to read:

20 1012.31 Personnel files.—Public school system employee
 21 personnel files shall be maintained according to the following
 22 provisions:

23 (3) (a) Public school system employee personnel files are
 24 subject to the provisions of s. 119.07(1), except as follows:

25 1. Any complaint and any material relating to the
 26 investigation of a complaint against an employee shall be
 27 confidential and exempt from the provisions of s. 119.07(1)
 28 until the conclusion of the preliminary investigation or until

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29 | such time as the preliminary investigation ceases to be active.
30 | If the preliminary investigation is concluded with the finding
31 | that there is no probable cause to proceed further and with no
32 | disciplinary action taken or charges filed, a statement to that
33 | effect signed by the responsible investigating official shall be
34 | attached to the complaint, and the complaint and all such
35 | materials shall be open thereafter to inspection pursuant to s.
36 | 119.07(1). If the preliminary investigation is concluded with
37 | the finding that there is probable cause to proceed further or
38 | with disciplinary action taken or charges filed, the complaint
39 | and all such materials shall be open thereafter to inspection
40 | pursuant to s. 119.07(1). If the preliminary investigation
41 | ceases to be active, the complaint and all such materials shall
42 | be open thereafter to inspection pursuant to s. 119.07(1). For
43 | the purpose of this subsection, a preliminary investigation
44 | shall be considered active as long as it is continuing with a
45 | reasonable, good faith anticipation that an administrative
46 | finding will be made in the foreseeable future. An investigation
47 | shall be presumed to be inactive if no finding relating to
48 | probable cause is made within 60 days after the complaint is
49 | made.

50 | 2. An employee evaluation prepared pursuant to s. 1012.33,
51 | s. 1012.34, or s. 1012.56 or rules adopted by the State Board of
52 | Education or district school board under the authority of those
53 | sections shall be confidential and exempt from the provisions of
54 | s. 119.07(1) until the end of the school year immediately
55 | following the school year in which the evaluation was made. No
56 | evaluation prepared before July 1, 1983, shall be made public

57 | pursuant to this section.

58 | 3.a.(I) Student learning growth data held by the
 59 | department or a school district for use in an evaluation of an
 60 | educator pursuant to s. 1012.34, that is educator-specific and
 61 | personally identifies an educator, is confidential and exempt
 62 | from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 63 | until the completion of the third school year following the
 64 | school year during which the evaluation was completed.

65 | (II) For purposes of this paragraph, the term "educator"
 66 | means instructional personnel and school administrators.

67 | (III) This exemption applies to student learning growth
 68 | data made confidential and exempt under sub-sub-subparagraph (I)
 69 | held by the department or a school district before, on, or after
 70 | the effective date of this exemption.

71 | b. Notwithstanding the exemption in sub-sub-subparagraph
 72 | a.(I), the department or a school district may disclose student
 73 | learning growth data made confidential and exempt under sub-sub-
 74 | subparagraph a.(I) under any of the following circumstances:

75 | I. The disclosure is expressly required by federal or
 76 | state law or a court order.

77 | II. The disclosure is to another governmental entity and
 78 | the disclosure is necessary for the entity to perform its
 79 | required duties and responsibilities.

80 | III. The educator consents in writing to the disclosure of
 81 | his or her student learning growth data and the release of the
 82 | data would not otherwise violate state or federal law or a court
 83 | order.

84 | IV. The disclosure is to an organization conducting

85 research or other studies for, or on behalf of, the department
 86 or school district.

87 c. This subparagraph is subject to the Open Government
 88 Sunset Review Act in accordance with s. 119.15 and shall stand
 89 repealed on October 2, 2018, unless reviewed and saved from
 90 repeal through reenactment by the Legislature.

91 ~~4.3.~~ No material derogatory to an employee shall be open
 92 to inspection until 10 days after the employee has been notified
 93 pursuant to paragraph (2) (c).

94 ~~5.4.~~ The payroll deduction records of an employee shall be
 95 confidential and exempt from the provisions of s. 119.07(1).

96 ~~6.5.~~ Employee medical records, including psychiatric and
 97 psychological records, shall be confidential and exempt from the
 98 provisions of s. 119.07(1); however, at any hearing relative to
 99 the competency or performance of an employee, the administrative
 100 law judge, hearing officer, or panel shall have access to such
 101 records.

102 Section 2. The Legislature finds that it is a public
 103 necessity that student learning growth data held by the
 104 Department of Education or a school district for use in an
 105 evaluation of an educator pursuant to s. 1012.34, Florida
 106 Statutes, that is educator-specific and personally identifies an
 107 educator, is confidential and exempt from s. 119.07(1), Florida
 108 Statutes, and s. 24(a), Article I of the State Constitution
 109 until the completion of the third school year following the
 110 school year during which the evaluation was completed. The
 111 duration of the exemption from public records requirements is
 112 limited because learning growth data is compiled annually and,

113 as available, aggregated annually over multiple years. This
114 limited period of confidentiality is critical because it allows
115 time for improved performance on the part of the affected
116 educator before student performance data is released. In
117 addition, this period of confidentiality allows school districts
118 to more effectively and efficiently administer the required
119 evaluation program and adjust interim training based on student
120 data. Early release of growth data interferes with the ongoing
121 process of improving instruction because it allows isolated
122 information to unduly represent an educator's performance and
123 could create unwarranted damage to the good name or reputation
124 of such an educator if data were released prematurely. In
125 addition, even though the data does not contain student names,
126 early release of growth data can lead to identification of the
127 class of students whose performance data is being utilized. This
128 exemption is in conformance with and affirms the holding of the
129 Second Judicial Circuit Court in *Morris Publishing Group, LLC*
130 *d/b/a/ The Florida Times-Union v. Florida Department of*
131 *Education and Florida Education Association, No. 2013-CA-357*
132 *(Fla. 2d Cir. Ct. Mar. 11, 2013).* This exemption codifies the
133 holding of the court, provides clarity regarding the timely
134 release of confidential and exempt information, and establishes
135 specific exceptions to the exemption.

136 Section 3. This act shall take effect October 1, 2013.