

1 State of Arkansas *As Engrossed: H3/13/15 H3/18/15*

2 90th General Assembly

A Bill

3 Regular Session, 2015

HOUSE BILL 1828

4

5 By: Representative Lowery

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For An Act To Be Entitled

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AN ACT TO ENSURE THAT PERSONALLY IDENTIFIABLE

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INFORMATION OF STUDENTS IS PROTECTED; TO LIMIT

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DISCLOSURE OR ACCESS TO PERSONALLY IDENTIFIABLE

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INFORMATION OF STUDENTS; AND FOR OTHER PURPOSES.

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Subtitle

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TO ENSURE THAT PERSONALLY IDENTIFIABLE

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INFORMATION OF STUDENTS IS PROTECTED.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code Title 6, Chapter 18, Subchapter 8, is amended

22 to add an additional section to read as follows:

23 6-18-902. Personally identifiable information of students.

24 (a)(1) The Department of Education or school district shall only

25 designate an entity that is under the direct control of the *department, a*

26 *state-supported institution of higher education, or a school district to act*

27 *as an authorized representative to conduct an audit, evaluation, compliance,*

28 *or enforcement action in connection with legal requirements of a state or*

29 *school district educational program if the audit, evaluation, compliance, or*

30 *enforcement action requires access to personally identifiable information of*

31 *a student.*

32 (2) The department or a school district shall not disclose

33 personally identifiable information of a student to a contractor, consultant,

34 or other party to whom the department or school district has outsourced

35 services or functions without the written consent of the student or the

36 student's parent or guardian if the student is under eighteen (18) years of



1 age unless the contractor, consultant, or other party:

2 (A) Performs a service or function for which the
3 department or school district would otherwise use an employee;

4 (B) Is under the direct control of the department or
5 school district with respect to the use and maintenance of educational
6 records containing personally identifiable information of a student;

7 (C) Limits internal access to educational records
8 containing personally identifiable information of a student to individuals
9 that are determined to have a legitimate interest;

10 (D) Does not use the educational records containing
11 personally identifiable information of a student for any other purpose than
12 those explicitly authorized in a contract;

13 (E) Does not disclose any personally identifiable
14 information to any other entity:

15 (i) Without prior written consent of the student or
16 the student's parent or guardian if the student is under eighteen (18) years
17 of age;

18 (ii) Unless required for administration of programs
19 under federal or state law; or

20 (iii) Unless required by law or court order;

21 (F) Maintains reasonable administrative, technical, and physical
22 safeguards to protect the security, confidentiality, and integrity of
23 personally identifiable information of a student;

24 (G) Uses encryption technologies to protect data while in
25 motion or in its custody from unauthorized disclosure using technology or
26 methodology specified by the Secretary of the United States Department of
27 Health and Human Services in guidance issued under the American Recovery and
28 Reinvestment Act of 2009, Section 13402(H)(2) of Pub.L.No. 111-5;

29 (H) Conducts a security audit annually and provides the
30 results of that audit to the department and school district that it contracts
31 with;

32 (I) Provides the department and school district that it
33 contracts with a breach remediation plan that is acceptable to the department
34 or school district before receiving any educational records that contain
35 personally identifiable information of a student;

36 (J) Reports all suspected security breaches to the

1 department or school district that it contracts with as soon as possible, but
2 not later than forty-eight (48) hours after a suspected breach is known;

3 (K) Reports all actual security breaches to the department
4 or school district that it contracts with as soon as possible, but not later
5 than twenty-four (24) hours after the actual breach is known;

6 (L) In the event of a suspected or actual security breach
7 or unauthorized disclosure of personally identifiable information of a
8 student, pays all costs and liabilities incurred by the department or a
9 school district that it contracts with, including without limitation costs
10 of:

11 (i) Responding to inquiries about the suspected or
12 actual security breach or unauthorized disclosure,

13 (ii) Notifying subjects of personally identifiable
14 information about the breach,

15 (iii) Mitigating the effects of the breach for the
16 subjects of the personally identifiable information,

17 (iv) Investigating the cause of the suspected or
18 actual security breach or unauthorized disclosure; and

19 (M) Destroys or returns to the department or school
20 district all personally identifiable information of students in its custody
21 upon request and at the termination of the contract.

22 (b) If an entity meets all the requirements under subsection (a) of
23 this section, the department or school district may disclose personally
24 identifiable information of a student without the consent of the student or
25 the student's parent or guardian if the student is under eighteen (18) years
26 of age to an entity that conducts student for the department or school
27 district in order to:

28 (1) Develop, validate, or administer predictive tests;

29 (2) Administer student aid programs; or

30 (3) Improve instruction.

31 (c)(1) Before disclosing without consent any personally identifiable
32 information of a student permitted under subsections (a) or (b) of this
33 section, the department or school district shall publically disclose on their
34 website and through electronic notification to the President Pro Tempore of
35 the Senate and the Speaker of the House of Representatives the existence of
36 any contract or agreement to which they intend to disclose personally

1 identifiable information of a student.

2 (2) The disclosure and notification provided by the department
3 or school district shall include the:

4 (A) Name and location of the data repository where
5 personally identifiable information of a student will be maintained;

6 (B) Purpose for which the data is intended to be used;

7 (C) Categories of individuals whose personally
8 identifiable information will be disclosed;

9 (D) Expected use of the data;

10 (E) Policies and practices of the entity;

11 (F) Title and business address of the department or school
12 district official who is responsible for the contract or agreement;

13 (G) Procedure for a student or a student's parent or
14 guardian if the student is under eighteen (18) years of age to be notified at
15 his or her request for access to any record pertaining to the student that is
16 maintained by the entity; and

17 (H) Source of the data.

18 (d) The department or school district shall not disclose personally
19 identifiable information of a student to an entity for commercial use without
20 the written permission of the student or the student's parent or guardian if
21 the student is under eighteen (18) years of age, including without
22 limitation:

23 (1) Marketing products or services;

24 (2) Compilation of lists for sale or rental;

25 (3) Development of products or services; or

26 (4) Creation of individual, household, or group profiles.

27 (e)(1) The department or school district shall not maintain, directly
28 or indirectly, personally identifiable information of a student without the
29 written consent of the student or the student's parent or guardian if the
30 student is under eighteen (18) years of age, unless the information is:

31 (A) Mandated to be kept by a federal or state law;

32 (B) Administratively required for the performance of
33 duties or the administration of programs under federal or state law;

34 (C) Relevant and necessary for the delivery of educational
35 services; or

36 (D) Designed to support a study of students or former

1 students as long as the information is retained not longer than five (5)
2 years after the students' last day of enrollment at a school district.

3 (2) The department or school district shall not attach
4 personally identifiable information of a student obtained by other federal or
5 state agencies to an educational record through a data match without the
6 written consent of a student or a student's parent or guardian if the student
7 is under eighteen (18) years of age unless the data match is:

8 (A) Explicitly mandated under federal or state law;

9 (B) Administratively required for the performance of
10 duties or the administration of programs under federal or state law; or

11 (C) Relevant and necessary for the delivery of educational
12 services.

13 (f) The Attorney General is authorized to enforce this section.

14 (g) This section does not restrict or affect the authority of the
15 Division of Legislative Audit to access records for the purpose of conducting
16 an audit.

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18 *SECTION 2. Arkansas Code Title 6, Chapter 60, Subchapter 9, is amended*
19 *to add an additional section to read as follows:*

20 6-60-904. Personally identifiable information of students.

21 (a)(1) The Department of Higher Education or an institution of higher
22 education shall designate only an entity that is under the direct control of
23 the Department of Higher Education, the Department of Education, or an or
24 institution of higher education to act as an authorized representative to
25 conduct an audit, evaluation, compliance, or enforcement action in connection
26 with legal requirements of a state or school district educational program if
27 the audit, evaluation, compliance, or enforcement action requires access to
28 personally identifiable information of a student.

29 (2) The Department of Higher Education or an institution of
30 higher education shall not disclose personally identifiable information of a
31 student to a contractor, consultant, or other party to whom the Department of
32 Higher Education or institution of higher education has outsourced services
33 or functions without the written consent of the student or the student's
34 parent or guardian if the student is under eighteen (18) years of age unless
35 the contractor, consultant, or other party:

36 (A) Performs a service or function for which the

1 Department of Higher Education or institution of higher education would
2 otherwise use an employee;

3 (B) Is under the direct control of the Department of
4 Higher Education or institution of higher education with respect to the use
5 and maintenance of educational records containing personally identifiable
6 information of a student;

7 (C) Limits internal access to educational records
8 containing personally identifiable information of a student to individuals
9 that are determined to have a legitimate interest;

10 (D) Does not use the educational records containing
11 personally identifiable information of a student for any other purpose than
12 those explicitly authorized in a contract;

13 (E) Does not disclose any personally identifiable
14 information to any other entity;

15 (i) Without prior written consent of the student or
16 the student's parent or guardian if the student is under eighteen (18) years
17 of age; or

18 (ii) Unless required by law or court order;

19 (F) Maintains reasonable administrative, technical, and
20 physical safeguards to protect the security, confidentiality, and integrity
21 of personally identifiable information of a student;

22 (G) Uses encryption technologies to protect data while in
23 motion or in its custody from unauthorized disclosure using technology or
24 methodology specified by the United States Secretary of Health and Human
25 Services in guidance issued under the American Recovery and Reinvestment Act
26 of 2009, Section 13402(H)(2) of Pub.L.No. 111-5, § 13402(H)(2);

27 (H) Conducts a security audit annually and provides the
28 results of that audit to the Department of Higher Education and institution
29 of higher education that it contracts with;

30 (I) Provides the Department of Higher Education and
31 institution of higher education that it contracts with a breach remediation
32 plan that is acceptable to the Department of Higher Education or institution
33 of higher education before receiving any educational records that contain
34 personally identifiable information of a student;

35 (J) Reports all suspected security breaches to the
36 Department of Higher Education or institution of higher education that it

1 contracts with as soon as possible, but not later than forty-eight (48) hours
2 after a suspected breach is known;

3 (K) Reports all actual security breaches to the Department
4 of Higher Education or institution of higher education that it contracts with
5 as soon as possible, but not later than twenty-four (24) hours after the
6 actual breach is known;

7 (L) In the event of a suspected or actual security breach
8 or unauthorized disclosure of personally identifiable information of a
9 student, pays all costs and liabilities incurred by the Department of Higher
10 Education or an institution of higher education that it contracts with,
11 including without limitation costs of:

12 (i) Responding to inquiries about the suspected or
13 actual security breach or unauthorized disclosure;

14 (ii) Notifying subjects of personally identifiable
15 information about the breach;

16 (iii) Mitigating the effects of the breach for the
17 subjects of the personally identifiable information; and

18 (iv) Investigating the cause of the suspected or
19 actual security breach or unauthorized disclosure; and

20 (M) Destroys or returns to the department or institution
21 of higher education all personally identifiable information of students in
22 its custody upon request and at the termination of the contract.

23 (b) If an entity meets all the requirements under subsection (a) of
24 this section, the Department of Higher Education or institution of higher
25 education may disclose personally identifiable information of a student
26 without the consent of the student or the student's parent or guardian if the
27 student is under eighteen (18) years of age to an entity that conducts
28 studies for the Department of Higher Education or institution of higher
29 education in order to:

30 (1) Develop, validate, or administer predictive tests;

31 (2) Administer student aid programs; or

32 (3) Improve instruction.

33 (c)(1) Before disclosing without consent any personally identifiable
34 information of a student permitted under subsection (a) or subsection (b) of
35 this section, the Department of Higher Education or institution of higher
36 education shall publically disclose on its website and through electronic

1 notification to the President Pro Tempore of the Senate and the Speaker of
2 the House of Representatives the existence of any contract or agreement to
3 which the Department of Higher Education or institution of higher education
4 intends to disclose personally identifiable information of a student.

5 (2) The disclosure and notification provided by the Department
6 of Higher Education or institution of higher education shall include the:

7 (A) Name and location of the data repository where
8 personally identifiable information of a student will be maintained;

9 (B) Purpose for which the data is intended to be used;

10 (C) Categories of individuals whose personally
11 identifiable information will be disclosed;

12 (D) Expected use of the data;

13 (E) Policies and practices of the entity;

14 (F) Title and business address of the Department of Higher
15 Education or institution of higher education official who is responsible for
16 the contract or agreement;

17 (G) Procedure for a student or a student's parent or
18 guardian if the student is under eighteen (18) years of age to be notified at
19 his or her request for access to any record pertaining to the student that is
20 maintained by the entity; and

21 (H) Source of the data.

22 (d) The Department of Higher Education or institution of higher
23 education shall not disclose personally identifiable information of a student
24 to an entity for commercial use without the written permission of the student
25 or the student's parent or guardian if the student is under eighteen (18)
26 years of age, including without limitation:

27 (1) Marketing products or services;

28 (2) Compilation of lists for sale or rental;

29 (3) Development of products or services; or

30 (4) Creation of individual, household, or group profiles.

31 (e)(1) The Department of Higher Education or institution of higher
32 education shall not maintain, directly or indirectly, personally identifiable
33 information of a student without the written consent of the student or the
34 student's parent or guardian if the student is under eighteen (18) years of
35 age, unless the information is:

36 (A) Mandated to be kept by a federal or state law;

1 (B) Administratively required for the performance of
2 duties or the administration of programs under federal or state law;

3 (C) Relevant and necessary for the delivery of educational
4 services; or

5 (D) Designed to support a study of students or former
6 students as long as the information is retained not longer than five (5)
7 years after the students' last day of enrollment at an institution of higher
8 education.

9 (2) The Department of Higher Education or institution of higher
10 education shall not attach personally identifiable information of a student
11 obtained by other federal or state agencies to an educational record through
12 a data match without the written consent of a student or a student's parent
13 or guardian if the student is under eighteen (18) years of age unless the
14 data match is:

15 (A) Explicitly mandated under federal or state law;

16 (B) Administratively required for the performance of
17 duties or the administration of programs under federal or state law; or

18 (C) Relevant and necessary for the delivery of educational
19 services.

20 (f) The Attorney General is authorized to enforce this section.

21 (g) This section does not restrict or affect the authority of the
22 Division of Legislative Audit to access records for the purpose of conducting
23 an audit.

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25 /s/Lowery
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