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INTERIM STUDY PROPOSAL 2015-081
As Engrossed: H3/13/15 H3/18/15

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1828

By: Representative Lowery

Filed with: House Committee on Education
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO ENSURE THAT PERSONALLY IDENTIFIABLE
INFORMATION OF STUDENTS IS PROTECTED; TO LIMIT
DISCLOSURE OR ACCESS TO PERSONALLY IDENTIFIABLE
INFORMATION OF STUDENTS; AND FOR OTHER PURPOSES.

Subtitle

TO ENSURE THAT PERSONALLY IDENTIFIABLE
INFORMATION OF STUDENTS IS PROTECTED.

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

SECTION 1. Arkansas Code Title 6, Chapter 18, Subchapter 8, is amended
to add an additional section to read as follows:

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

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

(2) The department or a school district shall not disclose
personally identifiable information of a student to a contractor, consultant,
or other party to whom the department or school district has outsourced

1 services or functions without the written consent of the student or the
2 student's parent or guardian if the student is under eighteen (18) years of
3 age unless the contractor, consultant, or other party:

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

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

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

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

15 (E) Does not disclose any personally identifiable
16 information to any other entity:

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

20 (ii) Unless required for administration of programs
21 under federal or state law; or

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

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

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

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

34 (I) Provides the department and school district that it
35 contracts with a breach remediation plan that is acceptable to the department

1 or school district before receiving any educational records that contain
2 personally identifiable information of a student;

3 (J) Reports all suspected security breaches to the
4 department or school district that it contracts with as soon as possible, but
5 not later than forty-eight (48) hours after a suspected breach is known;

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

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

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

16 (ii) Notifying subjects of personally identifiable
17 information about the breach,

18 (iii) Mitigating the effects of the breach for the
19 subjects of the personally identifiable information,

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

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

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

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

32 (2) Administer student aid programs; or

33 (3) Improve instruction.

34 (c)(1) Before disclosing without consent any personally identifiable
35 information of a student permitted under subsections (a) or (b) of this
36 section, the department or school district shall publically disclose on their

1 website and through electronic notification to the President Pro Tempore of
2 the Senate and the Speaker of the House of Representatives the existence of
3 any contract or agreement to which they intend to disclose personally
4 identifiable information of a student.

5 (2) The disclosure and notification provided by the department
6 or school district 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 or school
15 district official who is responsible for the contract or agreement;

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

20 (H) Source of the data.

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

26 (1) Marketing products or services;

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

28 (3) Development of products or services; or

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

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

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

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

1 (C) Relevant and necessary for the delivery of educational
2 services; or

3 (D) Designed to support a study of students or former
4 students as long as the information is retained not longer than five (5)
5 years after the students' last day of enrollment at a school district.

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

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

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

14 (C) Relevant and necessary for the delivery of educational
15 services.

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

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

20
21 SECTION 2. Arkansas Code Title 6, Chapter 60, Subchapter 9, is amended
22 to add an additional section to read as follows:

23 6-60-904. Personally identifiable information of students.

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

32 (2) The Department of Higher Education or an institution of
33 higher education shall not disclose personally identifiable information of a
34 student to a contractor, consultant, or other party to whom the Department of
35 Higher Education or institution of higher education has outsourced services
36 or functions without the written consent of the student or the student's

1 parent or guardian if the student is under eighteen (18) years of age unless
2 the contractor, consultant, or other party:

3 (A) Performs a service or function for which the
4 Department of Higher Education or institution of higher education would
5 otherwise use an employee;

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

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

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

16 (E) Does not disclose any personally identifiable
17 information to any other entity:

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

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

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

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

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

33 (I) Provides the Department of Higher Education and
34 institution of higher education that it contracts with a breach remediation
35 plan that is acceptable to the Department of Higher Education or institution

1 of higher education before receiving any educational records that contain
2 personally identifiable information of a student;

3 (J) Reports all suspected security breaches to the
4 Department of Higher Education or institution of higher education that it
5 contracts with as soon as possible, but not later than forty-eight (48) hours
6 after a suspected breach is known;

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

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

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

18 (ii) Notifying subjects of personally identifiable
19 information about the breach;

20 (iii) Mitigating the effects of the breach for the
21 subjects of the personally identifiable information; and

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

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

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

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

35 (2) Administer student aid programs; or

36 (3) Improve instruction.

1 (c)(1) Before disclosing without consent any personally identifiable
 2 information of a student permitted under subsection (a) or subsection (b) of
 3 this section, the Department of Higher Education or institution of higher
 4 education shall publically disclose on its website and through electronic
 5 notification to the President Pro Tempore of the Senate and the Speaker of
 6 the House of Representatives the existence of any contract or agreement to
 7 which the Department of Higher Education or institution of higher education
 8 intends to disclose personally identifiable information of a student.

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

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

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

14 (C) Categories of individuals whose personally
 15 identifiable information will be disclosed;

16 (D) Expected use of the data;

17 (E) Policies and practices of the entity;

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

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

25 (H) Source of the data.

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

31 (1) Marketing products or services;

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

33 (3) Development of products or services; or

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

35 (e)(1) The Department of Higher Education or institution of higher
 36 education shall not maintain, directly or indirectly, personally identifiable

information of a student without the written consent of the student or the student's parent or guardian if the student is under eighteen (18) years of age, unless the information is:

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

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

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

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

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

(A) Explicitly mandated under federal or state law;

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

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

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

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

/s/Lowery

Referred by the Arkansas House of Representatives

Prepared by: VJF