

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/13/15

A Bill

HOUSE BILL 1828

5 By: Representative Lowery
6

For An Act To Be Entitled

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

14 TO ENSURE THAT PERSONALLY IDENTIFIABLE
15 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 or
26 school district to act as an authorized representative to conduct an audit,
27 evaluation, compliance, or enforcement action in connection with legal
28 requirements of a state or school district educational program if the audit,
29 evaluation, compliance, or enforcement action requires access to personally
30 identifiable information of a student.

31 (2) The department or a school district shall not disclose
32 personally identifiable information of a student to a contractor, consultant,
33 or other party to whom the department or school district has outsourced
34 services or functions without the written consent of the student or the
35 student's parent or guardian if the student is under eighteen (18) years of
36 age unless the contractor, consultant, or other party:



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

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

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

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

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

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

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

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

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

26 (H) Conducts a security audit annually and provides the
27 results of that audit to the department and school district that it contracts
28 with;

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

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

36 (K) Reports all actual security breaches to the department

1 or school district that it contracts with as soon as possible, but not later
2 than twenty-four (24) hours after the actual breach is known;

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

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

10 (ii) Notifying subjects of personally identifiable
11 information about the breach,

12 (iii) Mitigating the effects of the breach for the
13 subjects of the personally identifiable information,

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

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

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

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

26 (2) Administer student aid programs; or

27 (3) Improve instruction.

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

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

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

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

4 (C) Categories of individuals whose personally
5 identifiable information will be disclosed;

6 (D) Expected use of the data;

7 (E) Policies and practices of the entity;

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

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

14 (H) Source of the data.

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

20 (1) Marketing products or services;

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

22 (3) Development of products or services; or

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

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

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

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

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

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

36 (2) The department or school district shall not attach

1 personally identifiable information of a student obtained by other federal or
2 state agencies to an educational record through a data match without the
3 written consent of a student or a student's parent or guardian if the student
4 is under eighteen (18) years of age unless the data match is:

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

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

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

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

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

14 6-60-904. Personally identifiable information of students.

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

22 (2) The department or an institution of higher education shall
23 not disclose personally identifiable information of a student to a
24 contractor, consultant, or other party to whom the department or institution
25 of higher education has outsourced services or functions without the written
26 consent of the student or the student's parent or guardian if the student is
27 under eighteen (18) years of age unless the contractor, consultant, or other
28 party:

29 (A) Performs a service or function for which the
30 department or institution of higher education would otherwise use an
31 employee;

32 (B) Is under the direct control of the department or
33 institution of higher education with respect to the use and maintenance of
34 educational records containing personally identifiable information of a
35 student;

36 (C) Limits internal access to educational records

1 containing personally identifiable information of a student to individuals
2 that are determined to have a legitimate interest;

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

6 (E) Does not disclose any personally identifiable
7 information to any other entity;

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

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

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

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

20 (H) Conducts a security audit annually and provides the
21 results of that audit to the department and institution of higher education
22 that it contracts with;

23 (I) Provides the department and institution of higher
24 education that it contracts with a breach remediation plan that is acceptable
25 to the department or institution of higher education before receiving any
26 educational records that contain personally identifiable information of a
27 student;

28 (J) Reports all suspected security breaches to the
29 department or institution of higher education that it contracts with as soon
30 as possible, but not later than forty-eight (48) hours after a suspected
31 breach is known;

32 (K) Reports all actual security breaches to the department
33 or institution of higher education that it contracts with as soon as
34 possible, but not later than twenty-four (24) hours after the actual breach
35 is known;

36 (L) In the event of a suspected or actual security breach

1 or unauthorized disclosure of personally identifiable information of a
2 student, pays all costs and liabilities incurred by the department or an
3 institution of higher education that it contracts with, including without
4 limitation costs of:

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

7 (ii) Notifying subjects of personally identifiable
8 information about the breach;

9 (iii) Mitigating the effects of the breach for the
10 subjects of the personally identifiable information; and

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

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

16 (b) If an entity meets all the requirements under subsection (a) of
17 this section, the department or institution of higher education may disclose
18 personally identifiable information of a student without the consent of the
19 student or the student's parent or guardian if the student is under eighteen
20 (18) years of age to an entity that conducts studies for the department or
21 institution of higher education in order to:

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

23 (2) Administer student aid programs; or

24 (3) Improve instruction.

25 (c)(1) Before disclosing without consent any personally identifiable
26 information of a student permitted under subsection (a) or subsection (b) of
27 this section, the department or institution of higher education shall
28 publically disclose on its website and through electronic notification to the
29 President Pro Tempore of the Senate and the Speaker of the House of
30 Representatives the existence of any contract or agreement to which the
31 department or institution of higher education intends to disclose personally
32 identifiable information of a student.

33 (2) The disclosure and notification provided by the department
34 or institution of higher education shall include the:

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

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

2 (C) Categories of individuals whose personally
3 identifiable information will be disclosed;

4 (D) Expected use of the data;

5 (E) Policies and practices of the entity;

6 (F) Title and business address of the department or
7 institution of higher education official who is responsible for the contract
8 or agreement;

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

13 (H) Source of the data.

14 (d) The department or institution of higher education shall not
15 disclose personally identifiable information of a student to an entity for
16 commercial use without the written permission of the student or the student's
17 parent or guardian if the student is under eighteen (18) years of age,
18 including without limitation:

19 (1) Marketing products or services;

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

21 (3) Development of products or services; or

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

23 (e)(1) The department or institution of higher education shall not
24 maintain, directly or indirectly, personally identifiable information of a
25 student without the written consent of the student or the student's parent or
26 guardian if the student is under eighteen (18) years of age, unless the
27 information is:

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

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

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

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

