

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H3/13/15 H3/18/15
A Bill

HOUSE BILL 1828

By: Representative Lowery

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 services or functions 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 contractor, consultant, or other party:

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

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

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

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

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

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

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

(iii) Unless required by law or court order;

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

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

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

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

(J) Reports all suspected security breaches to the

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

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

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

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

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

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

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

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

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

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

(2) Administer student aid programs; or

(3) Improve instruction.

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

identifiable information of a student.

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

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

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

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

(D) Expected use of the data;

(E) Policies and practices of the entity;

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

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

(H) Source of the data.

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

(1) Marketing products or services;

(2) Compilation of lists for sale or rental;

(3) Development of products or services; or

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

(e)(1) The department or school district 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 a school district.

(2) The department or school district 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.

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

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

(a)(1) The Department of Higher Education or an institution of higher education shall designate only an entity that is under the direct control of the Department of Higher Education, the Department of Education, or an or institution of higher education 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 of Higher Education or an institution of higher education shall not disclose personally identifiable information of a student to a contractor, consultant, or other party to whom the Department of Higher Education or institution of higher education has outsourced services or functions 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 contractor, consultant, or other party:

(A) Performs a service or function for which the

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

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

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

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

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

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

(ii) Unless required by law or court order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Administer student aid programs; or

(3) Improve instruction.

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

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

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

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

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

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

(D) Expected use of the data;

(E) Policies and practices of the entity;

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

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

(H) Source of the data.

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

(1) Marketing products or services;

(2) Compilation of lists for sale or rental;

(3) Development of products or services; or

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

(e)(1) The Department of Higher Education or institution of higher 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