

2357--A

2011-2012 Regular Sessions

I N   S E N A T E

January 19, 2011

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Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the release of personally identifiable information by school districts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The education law is amended by adding a new section 3212-b  
2     to read as follows:  
3     S 3212-B. RELEASE OF PERSONALLY IDENTIFIABLE INFORMATION BY SCHOOL  
4     DISTRICTS.     1. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS  
5     SHALL HAVE THE FOLLOWING MEANINGS:  
6     (A) "STUDENT" SHALL MEAN AND INCLUDE ANY PERSON WITH RESPECT TO WHOM  
7     AN EDUCATIONAL AGENCY OR INSTITUTION MAINTAINS EDUCATION RECORDS OR  
8     PERSONALLY IDENTIFIABLE INFORMATION, BUT DOES NOT INCLUDE A PERSON WHO  
9     HAS NOT BEEN IN ATTENDANCE AT SUCH AGENCY OR INSTITUTION.  
10    (B) "PERSONALLY IDENTIFIABLE INFORMATION (PII)" SHALL MEAN AND INCLUDE  
11    LOCATOR INFORMATION AND INDIRECT INFORMATION.  
12    (I) LOCATOR INFORMATION INCLUDES: A STUDENT'S OR PARENT'S ADDRESS,  
13    TELEPHONE NUMBER, AND E-MAIL ADDRESS.  
14    (II) INDIRECT INFORMATION INCLUDES ANY INFORMATION THAT CAN BE  
15    COMBINED WITH LOCATOR INFORMATION TO IDENTIFY SPECIFIC INDIVIDUALS,  
16    INCLUDING, BIRTH DATE, PLACE OF BIRTH, WEIGHT, HEIGHT, RECOGNIZED SCHOOL  
17    ACTIVITIES, SUCH AS SPORTS, CLUBS, SCHOOL NEWSPAPER AND OTHER EXTRACUR-  
18    RICULAR ACTIVITIES, RECOGNITIONS AND HONORS.  
19    (C) "DIRECTORY INFORMATION" SHALL MEAN AND INCLUDE THE STUDENT'S NAME  
20    MAINTAINED BY THEIR SCHOOL DISTRICT, AND INCLUDE INDIRECT INFORMATION,  
21    AS DEFINED IN THIS SECTION, WITH THE ADDITION OF THE STUDENT'S PICTURE  
22    AND WOULD BE CONSISTENT WITH THE EDUCATIONAL RECORD OF A PARTICULAR  
23    STUDENT AND NOT CONSIDERED TO BE HARMFUL OR AN INVASION OF PRIVACY.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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(D) "THIRD PARTY FOR NON-PROFIT PURPOSES" SHALL INCLUDE, BUT NOT BE LIMITED TO A SCHOOL NEWSPAPER, LOCAL NEWSPAPER, SCHOOL CLUBS AND ORGANIZATIONS, SCHOOL YEARBOOK, HONOR ROLL OR OTHER RECOGNITION LISTS, GRADUATION PROGRAMS, AND SPORTS RELATED PUBLICATIONS WHICH PROVIDE SPECIFIC INFORMATION ABOUT PARTICULAR STUDENTS FOR THE PURPOSES OF A SPECIFIC SPORTS ACTIVITY OR FUNCTION.

2. (A) A SCHOOL DISTRICT MAY DISSEMINATE STUDENTS' DIRECTORY INFORMATION TO THE CUSTODIAL PARENT OR A STUDENT OVER THE AGE OF EIGHTEEN, AND TO ANY EDUCATIONAL AGENCY, ORGANIZATION OR INSTITUTION; AND

(B) A SCHOOL DISTRICT MAY DISSEMINATE STUDENTS' DIRECTORY INFORMATION TO A THIRD PARTY FOR NON-PROFIT PURPOSES UNLESS THE CUSTODIAL PARENT OR STUDENT OVER THE AGE OF EIGHTEEN SPECIFICALLY PROHIBITS THE SCHOOL DISTRICT, IN WRITING PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, FROM DOING SO.

3. (A) A SCHOOL DISTRICT MAY NOT DISSEMINATE STUDENTS' PERSONALLY IDENTIFIABLE INFORMATION TO ANY THIRD PARTY FOR NON-PROFIT PURPOSES UNLESS THE CUSTODIAL PARENT OR STUDENT OVER THE AGE OF EIGHTEEN SPECIFICALLY CONSENTS, IN WRITING PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, THAT THE SCHOOL DISTRICT MAY DO SO.

(B) A SCHOOL DISTRICT MAY NOT DISSEMINATE STUDENTS' DIRECTORY INFORMATION OR PERSONALLY IDENTIFIABLE INFORMATION TO A THIRD PARTY FOR PROFIT-MAKING PURPOSES.

(C) A THIRD PARTY WHO RECEIVES STUDENTS' DIRECTORY INFORMATION OR PERSONALLY IDENTIFIABLE INFORMATION FROM A SCHOOL DISTRICT PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL NOT DISSEMINATE SUCH INFORMATION TO ANY OTHER PARTY. ANY PERSON, FIRM OR CORPORATION WHO VIOLATES THE PROVISIONS OF THIS PARAGRAPH SHALL BE PROHIBITED FROM RECEIVING ANY INFORMATION RELATING TO ANY STUDENT FOR A PERIOD OF FIVE YEARS.

4. WITHIN THE FIRST WEEK OF EACH SCHOOL YEAR, EACH SCHOOL DISTRICT SHALL ISSUE A PUBLIC NOTICE, INCLUDE IN THE STUDENT HANDBOOK, AND SEND HOME WITH EVERY STUDENT, INFORMATION STIPULATING THE DISCLOSURE PROCEDURES FOR DIRECTORY AND PERSONALLY IDENTIFIABLE INFORMATION.

(A) THE DISCLOSURE INFORMATION SHALL CONSIST OF:

(I) THE DEFINITION OF DIRECTORY INFORMATION AND PERSONALLY IDENTIFIABLE INFORMATION AS SET FORTH IN THIS SECTION;

(II) THE PROCEDURE FOR PROHIBITING THE SCHOOL DISTRICT FROM DISSEMINATING THE STUDENT'S DIRECTORY INFORMATION TO A THIRD PARTY FOR NON-PROFIT PURPOSES; AND

(III) THE PROCEDURE FOR AUTHORIZING THE SCHOOL DISTRICT TO DISSEMINATE THE STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION TO A THIRD PARTY FOR NON-PROFIT PURPOSES.

(B) IF THE SCHOOL DISTRICT DOES NOT RECEIVE A RESPONSE FROM THE CUSTODIAL PARENT OR STUDENT OVER THE AGE OF EIGHTEEN WITHIN THIRTY DAYS OF THE DISSEMINATION OF SUCH DISCLOSURE INFORMATION NOTICE, THE SCHOOL DISTRICT:

(I) MAY DISSEMINATE DIRECTORY INFORMATION RELATING TO SUCH STUDENT TO A THIRD PARTY FOR NON-PROFIT PURPOSES; AND

(II) IS PROHIBITED FROM DISSEMINATING THE PERSONALLY IDENTIFIABLE INFORMATION RELATING TO SUCH STUDENT TO ANY THIRD PARTY FOR NON-PROFIT PURPOSES.

5. (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY PARENT OF A STUDENT MAY PROVIDE WRITTEN CONSENT OR PROHIBIT DISCLOSURE AS SET FORTH IN THIS SECTION. WHERE PARENTS ARE SEPARATED OR DIVORCED, ANY CONSENT REQUIRED UNDER THIS SECTION MAY BE OBTAINED FROM EITHER PARENT, SUBJECT TO ANY AGREEMENT BETWEEN SUCH PARENTS OR COURT ORDER GOVERNING THE RIGHTS OF SUCH PARENTS. IN THE CASE OF A STUDENT WHOSE LEGAL GUARDIAN IS

1 IN AN INSTITUTION, A PERSON INDEPENDENT OF THE INSTITUTION WHO HAS NO  
2 OTHER CONFLICTING INTERESTS SHALL BE APPOINTED BY THE BOARD OF EDUCATION  
3 OF THE SCHOOL DISTRICT IN WHICH THE INSTITUTION IS LOCATED TO GIVE WRIT-  
4 TEN CONSENT WHICH MAY BE REQUIRED UNDER THIS SECTION.

5 (B) A PARENT OF A STUDENT WHO IS NOT THE STUDENT'S PRIMARY CUSTODIAL  
6 PARENT, UPON REQUEST, SHALL BE PERMITTED ACCESS TO ANY RECORDS OR INFOR-  
7 MATION CONCERNING THE STUDENT UNDER THE SAME TERMS AND CONDITIONS UNDER  
8 WHICH ACCESS TO THE RECORDS OR INFORMATION IS AVAILABLE TO THE PRIMARY  
9 CUSTODIAL PARENT OF THAT STUDENT, PROVIDED THAT THE ACCESS OF THE PARENT  
10 WHO IS NOT THE PRIMARY CUSTODIAL PARENT IS SUBJECT TO ANY AGREEMENT  
11 BETWEEN THE PARENTS, AND, IS SUBJECT TO ANY COURT ORDER GOVERNING THE  
12 RIGHTS OF THE PARENTS.

13 (C) IF THE PRIMARY CUSTODIAL PARENT OF A STUDENT HAS PRESENTED THE  
14 KEEPER OF A RECORD OR INFORMATION THAT IS RELATED TO THE STUDENT WITH A  
15 COPY OF AN ORDER THAT LIMITS THE TERMS AND CONDITIONS UNDER WHICH THE  
16 PARENT WHO IS NOT THE PRIMARY CUSTODIAL PARENT OF THE STUDENT IS TO HAVE  
17 ACCESS TO RECORDS AND INFORMATION PERTAINING TO THE STUDENT OR WITH A  
18 COPY OF ANY OTHER COURT ORDER GOVERNING THE RIGHTS OF THE PARENTS THAT  
19 SO LIMITS THOSE TERMS AND CONDITIONS, AND IF THE ORDER PERTAINS TO THE  
20 RECORD OR INFORMATION IN QUESTION, THE KEEPER OF THE RECORD OR INFORMA-  
21 TION SHALL PROVIDE ACCESS TO THE PARENT WHO IS NOT THE PRIMARY CUSTODIAL  
22 PARENT ONLY TO THE EXTENT AUTHORIZED IN THE ORDER. IF THE PRIMARY CUSTO-  
23 DIAL PARENT HAS PRESENTED THE KEEPER OF THE RECORD OR INFORMATION WITH  
24 SUCH AN ORDER, THE KEEPER OF THE RECORD SHALL PERMIT THE PARENT WHO IS  
25 NOT THE PRIMARY CUSTODIAL PARENT TO HAVE ACCESS TO THE RECORD OR INFOR-  
26 MATION ONLY IN ACCORDANCE WITH THE MOST RECENT SUCH ORDER THAT HAS BEEN  
27 PRESENTED TO THE KEEPER BY THE PRIMARY CUSTODIAL PARENT OR THE PARENT  
28 WHO IS NOT THE PRIMARY CUSTODIAL PARENT.

29 6. NOTHING IN THIS SECTION SHALL LIMIT THE ADMINISTRATIVE USE OF  
30 PUBLIC SCHOOL RECORDS BY A PERSON ACTING EXCLUSIVELY IN THE PERSON'S  
31 CAPACITY AS AN EMPLOYEE OF A BOARD OF EDUCATION OR OF THE STATE OR ANY  
32 OF ITS POLITICAL SUBDIVISIONS, ANY COURT, OR THE FEDERAL GOVERNMENT.

33 7. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE RELEASE OF  
34 STUDENT PERSONALLY IDENTIFIABLE INFORMATION TO THE DEPARTMENT OF EDUCA-  
35 TION, THE UNITED STATES MILITARY, OR ANY INSTITUTION OF HIGHER EDUCA-  
36 TION, ANY POLITICAL SUBDIVISION OR FEDERAL AGENCY THAT DEMONSTRATES AN  
37 APPROPRIATE NEED FOR THE INFORMATION OR A SCHOOL DISTRICT OR SCHOOL THAT  
38 DEMONSTRATES AN APPROPRIATE NEED FOR THE INFORMATION.

39 S 2. This act shall take effect July 1, 2011 and shall apply to school  
40 years beginning with the 2011-2012 academic year.