

2357--C

2011-2012 Regular Sessions

I N   S E N A T E

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Introduced by Sens. OPPENHEIMER, ADAMS, BONACIC, FUSCHILLO -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- 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 student 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) THE TERM "SCHOOL" MEANS ANY PUBLIC SCHOOL; IN ANY CITY, UNION  
11    FREE, COMMON OR CENTRAL SCHOOL DISTRICT, ANY NON-PUBLIC SCHOOL OF  
12    SECONDARY EDUCATION; AND ANY SCHOOL OF HIGHER EDUCATION.  
13    (C) DISCLOSABLE DIRECTORY INFORMATION (DDI) HEREAFTER REFERRED TO IN  
14    THIS SECTION AS "DIRECTORY INFORMATION", MEANS WITH RESPECT TO A  
15    STUDENT, THE STUDENT'S NAME; PHOTOGRAPH; AGE; MAJOR FIELD OF STUDY;  
16    GRADE LEVEL; ENROLLMENT STATUS (E.G., UNDERGRADUATE OR GRADUATE,  
17    FULL-TIME OR PART-TIME); DATES OF ATTENDANCE; PARTICIPATION IN OFFICIAL-  
18    LY RECOGNIZED ACTIVITIES AND SPORTS; WEIGHT AND HEIGHT OF MEMBERS OF

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

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1 ATHLETIC TEAMS; DEGREES, HONORS AND AWARDS RECEIVED; AND THE MOST RECENT  
2 EDUCATIONAL AGENCY OR INSTITUTION ATTENDED.

3 (D) "PERSONALLY IDENTIFIABLE STUDENT INFORMATION (PISI)" SHALL INCLUDE  
4 DISCLOSABLE DIRECTORY INFORMATION, AND A STUDENT'S OR PARENT'S ADDRESS,  
5 TELEPHONE NUMBER, AND E-MAIL ADDRESS.

6 2. (A) A SCHOOL MAY DISCLOSE DIRECTORY INFORMATION ABOUT A STUDENT  
7 ONLY:

8 (I) IF THE DISCLOSURE DOES NOT INCLUDE ANY INFORMATION OTHER THAN  
9 DISCLOSABLE DIRECTORY INFORMATION AS DEFINED IN THIS SECTION;

10 (II) AFTER GIVING THE PARENT OF THE STUDENT IN ATTENDANCE OR THE  
11 ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL NOTICE AND AN OPPORTUNITY  
12 TO OPT-OUT OF THE DISCLOSURE IN ACCORDANCE WITH SUBDIVISION THREE OF  
13 THIS SECTION; AND

14 (III) IF THE DISCLOSURE IS TO A SCHOOL NEWSPAPER, LOCAL NEWSPAPER,  
15 SCHOOL CLUB OR ORGANIZATION, SCHOOL YEARBOOK, HONOR ROLL OR OTHER RECOG-  
16 NITION LIST, GRADUATION PROGRAM, SPORTS RELATED PUBLICATION WHICH  
17 PROVIDES SPECIFIC INFORMATION ABOUT PARTICULAR STUDENTS FOR THE PURPOSES  
18 OF A SPECIFIC SPORTS ACTIVITY OR FUNCTION, OR PARENT AND TEACHER ORGAN-  
19 IZATION.

20 (B) A SCHOOL MAY DISCLOSE PERSONALLY IDENTIFIABLE STUDENT INFORMATION  
21 ONLY WITH THE AFFIRMATIVE CONSENT OF THE PARENT OF THE STUDENT IN  
22 ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE IN ACCORDANCE WITH THE  
23 PROCEDURE PROVIDED IN SUBDIVISION THREE OF THIS SECTION IF:

24 (I) THE DISCLOSURE IS TO THE PARENT OF ANY STUDENT IN ATTENDANCE OR  
25 ANY ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL; OR

26 (II) THE DISCLOSURE IS TO A NON-PROFIT ORGANIZATION THAT: (A) SEEKS  
27 THE INFORMATION FOR A SPECIFIC PURPOSE DETERMINED BY THE SCHOOL TO BE  
28 BENEFICIAL TO THE STUDENT; (B) STATES IN WRITING THAT IT HAS NOT USED OR  
29 DISCLOSED PERSONALLY IDENTIFIABLE STUDENT INFORMATION FROM ANY SCHOOL IN  
30 A MANNER INCONSISTENT WITH THE TERMS OF DISCLOSURE WITHIN THE PAST FIVE  
31 YEARS; AND (C) AGREES IN WRITING TO USE THE INFORMATION ONLY FOR THAT  
32 PURPOSE AND TO RETURN OR DESTROY THE INFORMATION WHEN THE PURPOSE HAS  
33 BEEN FULFILLED OR WITHIN ONE YEAR AFTER RECEIPT, WHICHEVER COMES FIRST;  
34 AND

35 (III) THE SCHOOL HAS NO REASON TO BELIEVE THAT THE RECIPIENT HAS USED  
36 OR DISCLOSED PERSONALLY IDENTIFIABLE STUDENT INFORMATION FROM ANY SCHOOL  
37 IN A MANNER INCONSISTENT WITH THE TERMS OF THE DISCLOSURE WITHIN THE  
38 PAST FIVE YEARS.

39 (C) UNLESS OTHERWISE ALLOWED BY LAW, A SCHOOL MAY NOT, EVEN WITH THE  
40 AFFIRMATIVE CONSENT OF THE PARENT OF THE STUDENT IN ATTENDANCE OR THE  
41 ELIGIBLE STUDENT IN ATTENDANCE, DISCLOSE PERSONALLY IDENTIFIABLE STUDENT  
42 INFORMATION FOR A COMMERCIAL, FOR-PROFIT ACTIVITY INCLUDING BUT NOT  
43 LIMITED TO USE FOR:

44 (I) MARKETING PRODUCTS OR SERVICES;

45 (II) SELLING PERSONALLY IDENTIFIABLE STUDENT INFORMATION FOR USE IN  
46 MARKETING PRODUCTS OR SERVICES;

47 (III) CREATING OR CORRECTING AN INDIVIDUAL OR HOUSEHOLD PROFILE;

48 (IV) COMPILATION OF A STUDENT LIST;

49 (V) SALE OF THE INFORMATION FOR ANY COMMERCIAL PURPOSE; OR

50 (VI) ANY OTHER PURPOSE CONSIDERED BY THE SCHOOL AS LIKELY TO BE A  
51 COMMERCIAL, FOR-PROFIT ACTIVITY.

52 (D) IN MAKING AN ALLOWABLE DISCLOSURE UNDER THIS SUBDIVISION, A SCHOOL  
53 MAY ONLY DISCLOSE THE MINIMUM AMOUNT OF INFORMATION NECESSARY TO ACCOM-  
54 PLISH THE PURPOSE OF THE DISCLOSURE.

55 3. WITHIN THE FIRST WEEK OF EACH SCHOOL YEAR, EACH SCHOOL DISTRICT  
56 SHALL ISSUE A PUBLIC NOTICE, INCLUDE IN THE STUDENT HANDBOOK, AND SEND

HOME WITH EVERY STUDENT, INFORMATION STIPULATING THE DISCLOSURE PROCEDURES FOR DISCLOSABLE DIRECTORY INFORMATION AND PERSONALLY IDENTIFIABLE STUDENT INFORMATION.

(A) THE DISCLOSURE INFORMATION SHALL CONSIST OF THE DEFINITION OF DISCLOSABLE DIRECTORY INFORMATION AND PERSONALLY IDENTIFIABLE STUDENT INFORMATION AS SET FORTH IN THIS SECTION; AND SHALL ALSO INCLUDE:

(I) THE PROCEDURE FOR PROHIBITING THE SCHOOL FROM DISSEMINATING DISCLOSABLE DIRECTORY INFORMATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION AND A DESCRIPTION OF ANY DIRECTORY INFORMATION THAT THE SCHOOL PROPOSES TO DISCLOSE DURING THE SCHOOL YEAR; AND

(II) THE PROCEDURE FOR AUTHORIZING THE SCHOOL TO DISCLOSE PERSONALLY IDENTIFIABLE STUDENT INFORMATION UNDER PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION AND A DESCRIPTION OF ANY PERSONALLY IDENTIFIABLE STUDENT INFORMATION THAT THE SCHOOL PROPOSES TO DISCLOSE DURING THE SCHOOL YEAR.

(B) (I) IF THE SCHOOL DOES NOT RECEIVE NOTICE FROM THE PARENT OF A STUDENT IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL PROHIBITING THE DISCLOSURE OF DIRECTORY INFORMATION WITHIN THIRTY DAYS OF THE DISSEMINATION OF THE INFORMATION REQUIRED TO BE PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE SCHOOL MAY DISSEMINATE DISCLOSABLE DIRECTORY INFORMATION RELATING TO THE STUDENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

(II) IF THE SCHOOL DOES RECEIVE CONSENT FROM THE PARENT OF A STUDENT IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL TO DISCLOSE PERSONALLY IDENTIFIABLE STUDENT INFORMATION UNDER PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, THE SCHOOL MAY DISSEMINATE PERSONALLY IDENTIFIABLE STUDENT INFORMATION AS SET FORTH IN THIS SECTION.

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

5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE RELEASE OF PERSONALLY IDENTIFIABLE STUDENT INFORMATION TO THE DEPARTMENT, THE UNITED STATES MILITARY, OR ANY INSTITUTION OF HIGHER EDUCATION, ANY POLITICAL SUBDIVISION OR FEDERAL AGENCY THAT DEMONSTRATES AN APPROPRIATE NEED FOR THE INFORMATION OR A SCHOOL DISTRICT OR SCHOOL THAT DEMONSTRATES AN APPROPRIATE NEED FOR THE INFORMATION.

S 2. This act shall take effect July 1, 2012 and shall apply to school years beginning with the 2012-2013 academic year.