S T A T E O F N E W Y O R K

6059

2013-2014 Regular Sessions

I N A S S E M B L Y

March 13, 2013

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the release of personally identifiable student information

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

Section 1. The education law is amended by adding a new section 3212-b to read as follows:

S 3212-B. RELEASE OF PERSONALLY IDENTIFIABLE STUDENT INFORMATION. 1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "DIRECTORY INFORMATION" SHALL MEAN, BUT NOT BE LIMITED TO, THE STUDENT'S NAME; ADDRESS; TELEPHONE LISTING; ELECTRONIC MAIL ADDRESS; PHOTOGRAPH; DATE AND PLACE OF BIRTH; MAJOR FIELD OF STUDY; GRADE LEVEL; ENROLLMENT STATUS (UNDERGRADUATE OR GRADUATE, FULL-TIME OR PART-TIME); DATES OF ATTENDANCE; PARTICIPATION IN OFFICIALLY RECOGNIZED ACTIVITIES AND SPORTS; WEIGHT AND HEIGHT OF MEMBERS OF ATHLETIC TEAMS; DEGREES, HONORS, AND AWARDS RECEIVED; THE MOST RECENT EDUCATIONAL AGENCY OR INSTITUTION ATTENDED; STUDENT ID NUMBER, USER ID, OR OTHER UNIQUE PERSONAL IDENTIFIER USED BY A STUDENT FOR PURPOSES OF ACCESSING OR COMMUNICATING IN ELECTRONIC SYSTEMS, BUT ONLY IF THE IDENTIFIER CANNOT BE USED TO GAIN ACCESS TO EDUCATION RECORDS EXCEPT WHEN USED IN CONJUNCTION WITH ONE OR MORE FACTORS THAT AUTHENTICATE THE USER'S IDENTITY, SUCH AS A PERSONAL IDENTIFICATION NUMBER (PIN), PASSWORD OR OTHER FACTOR KNOWN OR POSSESSED ONLY BY THE AUTHORIZED USER; AND A STUDENT ID NUMBER OR OTHER UNIQUE PERSONAL IDENTIFIER THAT IS DISPLAYED ON A STUDENT ID BADGE, BUT ONLY IF THE IDENTIFIER CANNOT BE USED TO GAIN ACCESS TO EDUCATION RECORDS EXCEPT WHEN USED IN CONJUNCTION WITH ONE OR MORE FACTORS THAT AUTHENTICATE THE USER'S IDENTITY, SUCH AS A PIN, PASSWORD, OR OTHER FACTOR KNOWN OR POSSESSED ONLY BY THE AUTHORIZED USER.

(B) "PERSONALLY IDENTIFIABLE STUDENT INFORMATION" SHALL MEAN, BUT NOT LIMITED TO, THE STUDENT'S NAME; THE NAME OF THE STUDENT'S PARENT OR

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

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OTHER FAMILY MEMBERS; THE ADDRESS OF THE STUDENT OR STUDENT'S FAMILY; A PERSONAL IDENTIFIER, SUCH AS THE STUDENT'S SOCIAL SECURITY NUMBER, STUDENT NUMBER, OR BIOMETRIC RECORD; OTHER INDIRECT IDENTIFIERS, SUCH AS THE STUDENT'S DATE OF BIRTH, PLACE OF BIRTH, AND MOTHER'S MAIDEN NAME; OTHER INFORMATION THAT, ALONE OR IN COMBINATION, IS LINKED OR LIKABLE TO A SPECIFIC STUDENT THAT WOULD ALLOW A REASONABLE PERSON IN THE SCHOOL COMMUNITY, WHO DOES NOT HAVE PERSONAL KNOWLEDGE OF THE RELEVANT CIRCUMSTANCES, TO IDENTIFY THE STUDENT WITH REASONABLE CERTAINTY; OR INFORMATION REQUESTED BY A PERSON WHO THE EDUCATIONAL AGENCY OR INSTITUTION REASONABLY BELIEVES KNOWS THE IDENTITY OF THE STUDENT TO WHOM THE EDUCATION RECORD RELATES.

(C) "BIOMETRIC RECORD", AS USED IN THE DEFINITION OF "PERSONALLY IDENTIFIABLY STUDENT INFORMATION", SHALL MEAN A RECORD OF ONE OR MORE MEASURABLE BIOLOGICAL OR BEHAVIORAL CHARACTERISTICS THAT CAN BE USED FOR AUTOMATED RECOGNITION OF AN INDIVIDUAL, INCLUDING FINGERPRINTS, RETINA AND IRIS PATTERNS, VOICEPRINTS, DNA SEQUENCE, FACIAL CHARACTERISTICS, AND HANDWRITING.

(D) "STUDENT" SHALL MEAN ANY PERSON WITH RESPECT TO WHOM AN EDUCATIONAL AGENCY OR INSTITUTION MAINTAINS EDUCATION RECORDS OR PERSONALLY IDENTIFIABLE INFORMATION, BUT DOES NOT INCLUDE A PERSON WHO HAS NOT BEEN IN ATTENDANCE AT SUCH AGENCY OR INSTITUTION.

(E) "SCHOOL" SHALL MEAN ANY PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOL OR COLLEGE AS DEFINED IN SECTION TWO OF THIS CHAPTER.

2. NEITHER THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, NOR SCHOOLS SHALL DISCLOSE ANY PERSONALLY IDENTIFIABLE STUDENT INFORMATION TO ANY THIRD PARTY WITHOUT PARENTAL CONSENT, OR IN THE CASE OF STUDENTS EIGHTEEN YEARS OF AGE OR OLDER THE CONSENT OF THE STUDENT, EXCEPT WHERE:

(A) DISCLOSURE IS REQUIRED BY LAW; OR

(B) DISCLOSURE IS PURSUANT TO A COURT ORDER OR SUBPOENA; OR

(C) DISCLOSURE IS TO A THIRD PARTY PURSUANT TO A CONTRACT WHEREBY THE ENTITY IS PERFORMING ADMINISTRATIVE, TECHNICAL OR TRANSACTIONAL FUNCTIONS THAT WOULD EITHER BE PERFORMED BY EMPLOYEES OF THE STATE DEPARTMENT OF EDUCATION, DISTRICT BOARD OF EDUCATION OR SCHOOL, PROVIDED THAT SAID CONTRACTOR:

(1) AGREES NOT TO DISCLOSE OR USE THE PERSONALLY IDENTIFIABLE STUDENT INFORMATION FOR ANY OTHER PURPOSES;

(2) MAINTAINS REASONABLE ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS TO PROTECT THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF THE PERSONALLY IDENTIFIABLE STUDENT INFORMATION; AND

(3) INDEMNIFIES THE DEPARTMENT, DISTRICT BOARD OF EDUCATION OR SCHOOL FOR ANY DAMAGES DUE TO A VIOLATION OF THIS SECTION; OR

(D) DISCLOSURE IS TO A THIRD PARTY FOR THE PURPOSE OF A RESEARCH STUDY CARRIED OUT BY OR ON THE BEHALF OF THE DEPARTMENT, DISTRICT BOARD OF EDUCATION OR SCHOOL; OR

(E) DISCLOSURE IS FOR THE PURPOSE OF A STATE OR FEDERAL AUDIT OR EVALUATION BY ENTITIES AUTHORIZED UNDER STATE OR FEDERAL LAW; OR

(F) DISCLOSURE IS NECESSARY DUE TO A HEALTH OR SAFETY EMERGENCY.

3. DETAILED RECORDS OF ALL NON-CONSENSUAL DISCLOSURES PURSUANT TO SUBDIVISION TWO OF THIS SECTION SHALL BE INCLUDED IN THE CORRESPONDING STUDENT'S EDUCATIONAL RECORDS.

4. WHERE THE DEPARTMENT, DISTRICT BOARD OF EDUCATION OR SCHOOL MAKES A DISCLOSURE PURSUANT TO PARAGRAPH (D) OF SUBDIVISION TWO OF THIS SECTION AND PURSUANT TO PARAGRAPH (E) OF SUBDIVISION TWO OF THIS SECTION WHERE PRACTICABLE, IT SHALL POST ON ITS WEBSITE, SEND HOME VIA MAIL AND MAKE OTHERWISE PUBLICLY AVAILABLE:

(A) THE PARTICULAR TYPE OR TYPES OF PERSONALLY IDENTIFIABLE STUDENT INFORMATION ARE TO BE DISCLOSED;
(B) THE ENTITY TO WHICH THE DISCLOSURE IS TO BE MADE;
(C) THE PURPOSE OF THE STUDY, AUDIT OR EVALUATION AND WHY THE DISCLOSURE IS NECESSARY FOR ITS COMPLETION;
(D) THE SPECIFIC TIME FRAME DURING WHICH THE PERSONALLY IDENTIFIABLE STUDENT INFORMATION WILL BE UTILIZED AND THEN SECURELY DESTROYED;
(E) THE ENTITY'S ASSURANCE OF COMPLIANCE WITH ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS, INCLUDING ALL THE FEDERAL AND STATE DATA PRIVACY AND DATA SAFEGUARDING RULES THE DEPARTMENT, DISTRICT BOARD OF EDUCATION AND SCHOOLS ARE SUBJECT TO, TO PROTECT THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF THE PERSONALLY IDENTIFIABLE STUDENT INFORMATION; AND
(F) THE ENTITY'S INDEMNIFICATION OF THE DEPARTMENT, DISTRICT BOARD OF EDUCATION OR SCHOOL FOR ANY VIOLATION OF THIS SECTION.
5. NOTIFICATION AND CONSENT FORMS SHALL INCLUDE:
(A) THE SCOPE, PURPOSE AND ALLOWABLE USES OF THE PERSONALLY IDENTIFIABLE STUDENT INFORMATION;
(B) THE RISK OF DATA BREACHES AND THE REASONABLE ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS USED TO PROTECT THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF THE PERSONALLY IDENTIFIABLE STUDENT INFORMATION; AND
(C) INFORMATION REGARDING WHO IS LEGALLY AND FINANCIALLY RESPONSIBLE SHOULD THERE BE A VIOLATION OF THIS SECTION.
6. THE STATE COMPTROLLER SHALL CARRY OUT REGULAR AUDITS TO ENSURE PROPER PROCEDURES HAVE BEEN USED; RELEVANT NOTIFICATIONS AND CONSENT FORMS ARE COMPLETED; AND SECURITY AND PRIVACY PROTECTIONS MEASURES USED IN THE STORAGE, TRANSMISSION AND USAGE OF PERSONALLY IDENTIFIABLE STUDENT INFORMATION ARE EFFECTIVE AND ACCURATELY DESCRIBED IN THE NOTIFICATION DOCUMENTS.
7. ANY ORGANIZATION OR COMPANY FOUND IN VIOLATION OF ANY OF THE PROVISIONS OF THIS SECTION SHALL BE PROHIBITED FROM OBTAINING PERSONALLY IDENTIFIABLE STUDENT INFORMATION FOR A PERIOD OF NO LESS THAN FIVE YEARS.
8. THE NEW YORK STATE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO OVERSEE AND ENFORCE COMPLIANCE WITH THIS SECTION AND TO IMPOSE APPROPRIATE PENALTIES ON THOSE FOUND IN VIOLATION OF ANY OF ITS PROVISIONS.
9. ANY DATA SYSTEMS MAINTAINED BY THE STATE OR DISTRICT OR THEIR REPRESENTATIVES SHALL, TO THE MAXIMUM EXTENT PRACTICABLE, CONFORM WITH THE FEDERAL TRADE COMMISSION'S DATA PRIVACY AND DATA SAFEGUARDING RULES.
10. NOTHING IN THIS SECTION SHALL LIMIT THE ADMINISTRATIVE USE OF SCHOOL RECORDS BY A PERSON ACTING EXCLUSIVELY IN THE PERSON'S CAPACITY AS AN EMPLOYEE OF A SCHOOL, A BOARD OF EDUCATION OR OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, ANY COURT OR THE FEDERAL GOVERNMENT THAT DEMONSTRATES AN APPROPRIATE NEED FOR THE INFORMATION.
S 2. This act shall take effect July 1, 2013 and shall apply to school years beginning with the 2013-2014 academic year.