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

10487--A

I N A S S E M B L Y

May 31, 2016

Introduced by M. of A. NOLAN -- read once and referred 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 unauthorized release of personally identifiable information relating to students

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

Section 1. Subdivision 1 of section 2-d of the education law is amended by adding a new paragraph 1 to read as follows:

1. "DIRECTORY INFORMATION" SHALL HAVE THE SAME MEANING AS DEFINED IN SECTION 99.3 OF TITLE THIRTY-FOUR OF THE CODE OF FEDERAL REGULATIONS IMPLEMENTING THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT, SECTION TWELVE HUNDRED THIRTY-TWO-G OF TITLE TWENTY OF THE UNITED STATES CODE. "DISCLOSABLE DIRECTORY INFORMATION" MEANS WITH RESPECT TO A STUDENT, THE STUDENT'S NAME; PHOTOGRAPH; AGE; GRADE LEVEL; ENROLLMENT STATUS; DATES OF ATTENDANCE; PARTICIPATION IN OFFICIALLY RECOGNIZED ACTIVITIES AND SPORTS; WEIGHT AND HEIGHT OF MEMBERS OF ATHLETIC TEAMS; DEGREES, HONORS AND AWARDS RECEIVED; AND THE MOST RECENT EDUCATIONAL AGENCY OR INSTITUTION ATTENDED.

S 2. Subdivision 3 of section 2-d of the education law is amended by adding a new paragraph e to read as follows:

E. WITHIN THE FIRST MONTH OF EACH SCHOOL YEAR, EACH EDUCATIONAL AGENCY SHALL PUBLICLY ISSUE A NOTICE, INCLUDE IN THE STUDENT HANDBOOK IF APPLICABLE, AND SEND HOME WITH EVERY STUDENT, INFORMATION STIPULATING THE DISCLOSURE PROCEDURES FOR PERSONALLY IDENTIFIABLE INFORMATION.

(1) THE NOTICE REQUIRED UNDER THIS PARAGRAPH SHALL INCLUDE:

(I) A DESCRIPTION OF ANY PERSONALLY IDENTIFIABLE INFORMATION THAT THE EDUCATIONAL AGENCY EXPECTS TO DISCLOSE DURING THE SCHOOL YEAR;

(II) THE PROCEDURE THAT A PARENT OF A STUDENT OR AN ELIGIBLE STUDENT CAN FOLLOW TO PROHIBIT THE EDUCATIONAL AGENCY FROM DISSEMINATING DISCLOSABLE DIRECTORY INFORMATION; AND

(III) THE PROCEDURE THAT A PARENT OF A STUDENT OR AN ELIGIBLE STUDENT CAN FOLLOW TO PROHIBIT THE EDUCATIONAL AGENCY FROM DISSEMINATING PERSONALLY IDENTIFIABLE INFORMATION.

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

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(2) IF THE SCHOOL DOES NOT RECEIVE AN OBJECTION FROM THE PARENT OF A STUDENT OR THE ELIGIBLE STUDENT WITHIN THIRTY DAYS OF THE DISSEMINATION OF THE NOTICE REQUIRED TO BE PROVIDED UNDER THIS PARAGRAPH, THE EDUCATIONAL AGENCY MAY DISSEMINATE DISCLOSABLE DIRECTORY INFORMATION RELATING TO THE STUDENT.

S 3. Paragraph f of subdivision 4 of section 2-d of the education law, as added by section 1 of subpart L of part AA of chapter 56 of the laws of 2014, is amended to read as follows:

f. Personally identifiable information maintained by educational agencies, including data provided to third-party contractors and their assignees, shall not be sold or used for marketing purposes, INCLUDING BUT NOT LIMITED TO MARKETING PRODUCTS OR SERVICES; SELLING OR RENTING PERSONALLY IDENTIFIABLE INFORMATION FOR USE IN MARKETING PRODUCTS OR SERVICES; CREATING, CORRECTING, OR UPDATING AN INDIVIDUAL OR HOUSEHOLD PROFILE; COMPILATION OF A LIST OF STUDENTS; OR ANY OTHER PURPOSE CONSIDERED BY THE SCHOOL AS LIKELY TO BE A COMMERCIAL, FOR-PROFIT ACTIVITY.

S 4. Subdivision 7 of section 2-d of the education law is amended by adding a new paragraph e to read as follows:

E. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE RELEASE OF PERSONALLY IDENTIFIABLE 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 5. Section 2-d of the education law is amended by adding a new subdivision 8 to read as follows:

8. DISCLOSURE. A. A SCHOOL MAY DISCLOSE DIRECTORY INFORMATION ABOUT A STUDENT ONLY:

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

(2) AFTER GIVING THE PARENT OF THE STUDENT IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL NOTICE AND AN OPPORTUNITY TO OPT-OUT OF THE DISCLOSURE IN ACCORDANCE WITH PARAGRAPH E OF SUBDIVISION THREE OF THIS SECTION; AND

(3) IF THE DISCLOSURE IS TO A SCHOOL NEWSPAPER, LOCAL NEWSPAPER, SCHOOL CLUB OR ORGANIZATION, SCHOOL YEARBOOK, SCHOOL PHOTOGRAPHER, HONOR ROLL OR OTHER RECOGNITION LIST, GRADUATION PROGRAM, SPORTS RELATED PUBLICATION WHICH PROVIDES SPECIFIC INFORMATION ABOUT PARTICULAR STUDENTS FOR THE PURPOSES OF A SPECIFIC SPORTS ACTIVITY OR FUNCTION, OR PARENT AND TEACHER ORGANIZATION; OR

(4) IF THE DISCLOSURE IS TO ANY PARENT OF ANY STUDENT IN ATTENDANCE OR ANY ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL; OR

(5) IF THE DISCLOSURE IS TO ANY ORGANIZATION THE EDUCATION AGENCY HAS A WRITTEN AGREEMENT WITH TO PROVIDE SERVICES OR PRODUCTS. SUCH ORGANIZATION MAY UTILIZE DISCLOSABLE DIRECTORY INFORMATION AS SPECIFIED IN SUCH WRITTEN AGREEMENT, AND, AS SPECIFIED IN SUCH WRITTEN AGREEMENT, MAY MARKET SUCH SERVICES AND PRODUCTS WITHIN THE SCHOOL COMMUNITY.

B. A SCHOOL MAY DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION IN ACCORDANCE WITH THE PROCEDURE PROVIDED IN PARAGRAPH E OF SUBDIVISION THREE OF THIS SECTION, AFTER GIVING THE PARENT OF THE STUDENT IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE NOTICE AND AN OPPORTUNITY TO PROHIBIT THE DISCLOSURE IN ACCORDANCE WITH PARAGRAPH E OF SUBDIVISION THREE OF THIS SECTION, IF:

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

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

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

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

(1) MARKETING PRODUCTS OR SERVICES;

(2) SELLING PERSONALLY IDENTIFIABLE INFORMATION FOR USE IN MARKETING PRODUCTS OR SERVICES;

(3) CREATING OR CORRECTING AN INDIVIDUAL OR HOUSEHOLD PROFILE;

(4) COMPILATION OF A STUDENT LIST;

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

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

D. IN MAKING AN ALLOWABLE DISCLOSURE UNDER THIS SUBDIVISION, A SCHOOL MAY ONLY DISCLOSE THE MINIMUM AMOUNT OF INFORMATION NECESSARY TO ACCOMPLISH THE PURPOSE OF THE DISCLOSURE.

S 6. This act shall take effect July 1, 2017 and shall apply to school years beginning with the 2017-2018 academic year.