

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

1 HOME WITH EVERY STUDENT, INFORMATION STIPULATING THE DISCLOSURE PROCE-
2 DURES FOR DISCLOSABLE DIRECTORY INFORMATION AND PERSONALLY IDENTIFIABLE
3 STUDENT INFORMATION.

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

7 (I) THE PROCEDURE FOR PROHIBITING THE SCHOOL FROM DISSEMINATING DISC-
8 LOSABLE DIRECTORY INFORMATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF
9 THIS SECTION AND A DESCRIPTION OF ANY DIRECTORY INFORMATION THAT THE
10 SCHOOL PROPOSES TO DISCLOSE DURING THE SCHOOL YEAR; AND

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

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

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

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

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

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