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

8474--B

2011-2012 Regular Sessions

I N A S S E M B L Y

June 17, 2011

Introduced by M. of A. ROSENTHAL, NOLAN -- read once and referred to the Committee on Education -- recommitted to the Committee on Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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:

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 INFORMATION BY SCHOOL DISTRICTS. 1. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

(B) THE TERM "SCHOOL" MEANS ANY PUBLIC SCHOOL; IN ANY CITY, UNION FREE, COMMON OR CENTRAL SCHOOL DISTRICT AND ANY NON-PUBLIC SCHOOL OF ELEMENTARY OR SECONDARY EDUCATION.

(C) THE TERM "ELIGIBLE STUDENT" MEANS A STUDENT WHO HAS REACHED EIGHTEEN YEARS OF AGE.

(D) DISCLOSABLE DIRECTORY INFORMATION (DDI) HEREAFTER REFERRED TO IN THIS SECTION AS "DIRECTORY INFORMATION", MEANS WITH RESPECT TO A STUDENT, THE STUDENT'S NAME; PHOTOGRAPH; AGE; GRADE LEVEL; DATES OF ATTENDANCE; PARTICIPATION IN OFFICIALLY RECOGNIZED ACTIVITIES AND SPORTS; WEIGHT AND HEIGHT OF MEMBERS OF ATHLETIC TEAMS; HONORS AND AWARDS RECEIVED; AND THE MOST RECENT SCHOOL ATTENDED.

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

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

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

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

(II) 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 SUBDIVISION THREE OF THIS SECTION; AND

(III) IF THE DISCLOSURE IS TO A SCHOOL NEWSPAPER, LOCAL NEWSPAPER, SCHOOL CLUB OR ORGANIZATION, SCHOOL YEARBOOK, 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.

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

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

(II) THE DISCLOSURE IS TO A NON-PROFIT ORGANIZATION THAT: (A) SEEKS THE INFORMATION FOR A SPECIFIC PURPOSE DETERMINED BY THE SCHOOL TO BE BENEFICIAL TO THE STUDENT; (B) STATES IN WRITING THAT IT HAS NOT USED OR DISCLOSED PERSONALLY IDENTIFIABLE STUDENT INFORMATION FROM ANY SCHOOL IN A MANNER INCONSISTENT WITH THE TERMS OF DISCLOSURE WITHIN THE PAST FIVE YEARS; AND (C) 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

(III) THE SCHOOL HAS NO REASON TO BELIEVE THAT THE RECIPIENT HAS USED OR DISCLOSED PERSONALLY IDENTIFIABLE STUDENT 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 STUDENT INFORMATION FOR A COMMERCIAL, FOR-PROFIT ACTIVITY INCLUDING BUT NOT LIMITED TO USE FOR:

(I) MARKETING PRODUCTS OR SERVICES;

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

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

(IV) COMPILATION OF A STUDENT LIST;

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

(VI) 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.

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

(A) THE DISCLOSURE INFORMATION SHALL CONSIST OF THE DEFINITION OF 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 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 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, OR A SCHOOL DISTRICT OR SCHOOL THAT DEMONSTRATES AN APPROPRIATE NEED FOR THE INFORMATION.

S 2. This act shall take effect July 1, 2013.