

6059

2013-2014 Regular Sessions

I N   A S S E M B L Y

March 13, 2013

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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 ASSEM-  
BLY, 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 STUDENT INFORMATION. 1.  
4     DEFINITIONS. AS USED IN THIS SECTION:  
5     (A) "DIRECTORY INFORMATION" SHALL MEAN, BUT NOT BE LIMITED TO, THE  
6     STUDENT'S NAME; ADDRESS; TELEPHONE LISTING; ELECTRONIC MAIL ADDRESS;  
7     PHOTOGRAPH; DATE AND PLACE OF BIRTH; MAJOR FIELD OF STUDY; GRADE LEVEL;  
8     ENROLLMENT STATUS (UNDERGRADUATE OR GRADUATE, FULL-TIME OR PART-TIME);  
9     DATES OF ATTENDANCE; PARTICIPATION IN OFFICIALLY RECOGNIZED ACTIVITIES  
10    AND SPORTS; WEIGHT AND HEIGHT OF MEMBERS OF ATHLETIC TEAMS; DEGREES,  
11    HONORS, AND AWARDS RECEIVED; THE MOST RECENT EDUCATIONAL AGENCY OR  
12    INSTITUTION ATTENDED; STUDENT ID NUMBER, USER ID, OR OTHER UNIQUE  
13    PERSONAL IDENTIFIER USED BY A STUDENT FOR PURPOSES OF ACCESSING OR  
14    COMMUNICATING IN ELECTRONIC SYSTEMS, BUT ONLY IF THE IDENTIFIER CANNOT  
15    BE USED TO GAIN ACCESS TO EDUCATION RECORDS EXCEPT WHEN USED IN CONJUNC-  
16    TION WITH ONE OR MORE FACTORS THAT AUTHENTICATE THE USER'S IDENTITY,  
17    SUCH AS A PERSONAL IDENTIFICATION NUMBER (PIN), PASSWORD OR OTHER FACTOR  
18    KNOWN OR POSSESSED ONLY BY THE AUTHORIZED USER; AND A STUDENT ID NUMBER  
19    OR OTHER UNIQUE PERSONAL IDENTIFIER THAT IS DISPLAYED ON A STUDENT ID  
20    BADGE, BUT ONLY IF THE IDENTIFIER CANNOT BE USED TO GAIN ACCESS TO  
21    EDUCATION RECORDS EXCEPT WHEN USED IN CONJUNCTION WITH ONE OR MORE  
22    FACTORS THAT AUTHENTICATE THE USER'S IDENTITY, SUCH AS A PIN, PASSWORD,  
23    OR OTHER FACTOR KNOWN OR POSSESSED ONLY BY THE AUTHORIZED USER.  
24    (B) "PERSONALLY IDENTIFIABLE STUDENT INFORMATION" SHALL MEAN, BUT NOT  
25    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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1 OTHER FAMILY MEMBERS; THE ADDRESS OF THE STUDENT OR STUDENT'S FAMILY; A  
2 PERSONAL IDENTIFIER, SUCH AS THE STUDENT'S SOCIAL SECURITY NUMBER,  
3 STUDENT NUMBER, OR BIOMETRIC RECORD; OTHER INDIRECT IDENTIFIERS, SUCH AS  
4 THE STUDENT'S DATE OF BIRTH, PLACE OF BIRTH, AND MOTHER'S MAIDEN NAME;  
5 OTHER INFORMATION THAT, ALONE OR IN COMBINATION, IS LINKED OR LIKABLE TO  
6 A SPECIFIC STUDENT THAT WOULD ALLOW A REASONABLE PERSON IN THE SCHOOL  
7 COMMUNITY, WHO DOES NOT HAVE PERSONAL KNOWLEDGE OF THE RELEVANT CIRCUM-  
8 STANCES, TO IDENTIFY THE STUDENT WITH REASONABLE CERTAINTY; OR INFORMA-  
9 TION REQUESTED BY A PERSON WHO THE EDUCATIONAL AGENCY OR INSTITUTION  
10 REASONABLY BELIEVES KNOWS THE IDENTITY OF THE STUDENT TO WHOM THE EDUCA-  
11 TION RECORD RELATES.

12 (C) "BIOMETRIC RECORD", AS USED IN THE DEFINITION OF "PERSONALLY IDEN-  
13 TIFIABLY STUDENT INFORMATION", SHALL MEAN A RECORD OF ONE OR MORE MEAS-  
14 URABLE BIOLOGICAL OR BEHAVIORAL CHARACTERISTICS THAT CAN BE USED FOR  
15 AUTOMATED RECOGNITION OF AN INDIVIDUAL, INCLUDING FINGERPRINTS, RETINA  
16 AND IRIS PATTERNS, VOICEPRINTS, DNA SEQUENCE, FACIAL CHARACTERISTICS,  
17 AND HANDWRITING.

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

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

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

28 (A) DISCLOSURE IS REQUIRED BY LAW; OR

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

30 (C) DISCLOSURE IS TO A THIRD PARTY PURSUANT TO A CONTRACT WHEREBY THE  
31 ENTITY IS PERFORMING ADMINISTRATIVE, TECHNICAL OR TRANSACTIONAL FUNC-  
32 TIONS THAT WOULD EITHER BE PERFORMED BY EMPLOYEES OF THE STATE DEPART-  
33 MENT OF EDUCATION, DISTRICT BOARD OF EDUCATION OR SCHOOL, PROVIDED THAT  
34 SAID CONTRACTOR:

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

37 (2) MAINTAINS REASONABLE ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFE-  
38 GUARDS TO PROTECT THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF THE  
39 PERSONALLY IDENTIFIABLE STUDENT INFORMATION; AND

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

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

45 (E) DISCLOSURE IS FOR THE PURPOSE OF A STATE OR FEDERAL AUDIT OR EVAL-  
46 UATION BY ENTITIES AUTHORIZED UNDER STATE OR FEDERAL LAW; OR

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

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

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

1 (A) THE PARTICULAR TYPE OR TYPES OF PERSONALLY IDENTIFIABLE STUDENT  
2 INFORMATION ARE TO BE DISCLOSED;

3 (B) THE ENTITY TO WHICH THE DISCLOSURE IS TO BE MADE;

4 (C) THE PURPOSE OF THE STUDY, AUDIT OR EVALUATION AND WHY THE DISCLO-  
5 SURE IS NECESSARY FOR ITS COMPLETION;

6 (D) THE SPECIFIC TIME FRAME DURING WHICH THE PERSONALLY IDENTIFIABLE  
7 STUDENT INFORMATION WILL BE UTILIZED AND THEN SECURELY DESTROYED;

8 (E) THE ENTITY'S ASSURANCE OF COMPLIANCE WITH ADMINISTRATIVE, TECHNICAL  
9 AND PHYSICAL SAFEGUARDS, INCLUDING ALL THE FEDERAL AND STATE DATA  
10 PRIVACY AND DATA SAFEGUARDING RULES THE DEPARTMENT, DISTRICT BOARD OF  
11 EDUCATION AND SCHOOLS ARE SUBJECT TO, TO PROTECT THE SECURITY, CONFIDEN-  
12 TIALITY AND INTEGRITY OF THE PERSONALLY IDENTIFIABLE STUDENT INFORMA-  
13 TION; AND

14 (F) THE ENTITY'S INDEMNIFICATION OF THE DEPARTMENT, DISTRICT BOARD OF  
15 EDUCATION OR SCHOOL FOR ANY VIOLATION OF THIS SECTION.

16 5. NOTIFICATION AND CONSENT FORMS SHALL INCLUDE:

17 (A) THE SCOPE, PURPOSE AND ALLOWABLE USES OF THE PERSONALLY IDENTIFI-  
18 ABLE STUDENT INFORMATION;

19 (B) THE RISK OF DATA BREACHES AND THE REASONABLE ADMINISTRATIVE, TECH-  
20 NICAL AND PHYSICAL SAFEGUARDS USED TO PROTECT THE SECURITY, CONFIDEN-  
21 TIALITY AND INTEGRITY OF THE PERSONALLY IDENTIFIABLE STUDENT INFORMA-  
22 TION; AND

23 (C) INFORMATION REGARDING WHO IS LEGALLY AND FINANCIALLY RESPONSIBLE  
24 SHOULD THERE BE A VIOLATION OF THIS SECTION.

25 6. THE STATE COMPTROLLER SHALL CARRY OUT REGULAR AUDITS TO ENSURE  
26 PROPER PROCEDURES HAVE BEEN USED; RELEVANT NOTIFICATIONS AND CONSENT  
27 FORMS ARE COMPLETED; AND SECURITY AND PRIVACY PROTECTIONS MEASURES USED  
28 IN THE STORAGE, TRANSMISSION AND USAGE OF PERSONALLY IDENTIFIABLE  
29 STUDENT INFORMATION ARE EFFECTIVE AND ACCURATELY DESCRIBED IN THE  
30 NOTIFICATION DOCUMENTS.

31 7. ANY ORGANIZATION OR COMPANY FOUND IN VIOLATION OF ANY OF THE  
32 PROVISIONS OF THIS SECTION SHALL BE PROHIBITED FROM OBTAINING PERSONALLY  
33 IDENTIFIABLE STUDENT INFORMATION FOR A PERIOD OF NO LESS THAN FIVE  
34 YEARS.

35 8. THE NEW YORK STATE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO  
36 OVERSEE AND ENFORCE COMPLIANCE WITH THIS SECTION AND TO IMPOSE APPROPRI-  
37 ATE PENALTIES ON THOSE FOUND IN VIOLATION OF ANY OF ITS PROVISIONS.

38 9. ANY DATA SYSTEMS MAINTAINED BY THE STATE OR DISTRICT OR THEIR  
39 REPRESENTATIVES SHALL, TO THE MAXIMUM EXTENT PRACTICABLE, CONFORM WITH  
40 THE FEDERAL TRADE COMMISSION'S DATA PRIVACY AND DATA SAFEGUARDING RULES.

41 10. NOTHING IN THIS SECTION SHALL LIMIT THE ADMINISTRATIVE USE OF  
42 SCHOOL RECORDS BY A PERSON ACTING EXCLUSIVELY IN THE PERSON'S CAPACITY  
43 AS AN EMPLOYEE OF A SCHOOL, A BOARD OF EDUCATION OR OF THE STATE OR ANY  
44 OF ITS POLITICAL SUBDIVISIONS, ANY COURT OR THE FEDERAL GOVERNMENT THAT  
45 DEMONSTRATES AN APPROPRIATE NEED FOR THE INFORMATION.

46 S 2. This act shall take effect July 1, 2013 and shall apply to school  
47 years beginning with the 2013-2014 academic year.