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

6059--A

2013-2014 Regular Sessions

I N A S S E M B L Y

March 13, 2013

Introduced by M. of A. O'DONNELL, MILLMAN, JAFFEE, BENEDETTO, LIFTON, DUPREY, TITONE, MAISEL, HEVESI, ZEBROWSKI, ENGLEBRIGHT, WEPRIN, STECK, ABINANTI, MONTESANO, SCHIMMINGER, RAIA, GIBSON, COLTON, BRENNAN, FINCH, McDONOUGH, P. LOPEZ, COOK, SCHIMEL, SKOUFIS, BRAUNSTEIN, MALLIOTAKIS, BROOK-KRASNY, MOSLEY, GUNTHER, CUSICK, PAULIN, GOLDFEDER, FAHY, GABRYSZAK, BORELLI, WEINSTEIN -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, BUTLER, CLARK, CROUCH, CYMBROWITZ, DenDEKKER, DINOWITZ, GALEF, GARBARINO, GLICK, GOTTFRIED, JACOBS, KEARNS, LENTOL, MARKEY, McDONALD, PERRY, RIVERA, SIMANOWITZ, SOLAGES, STEC, SWEENEY, WEISENBERG -- 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 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 INFORMATION. 1. DEFINITIONS. AS USED IN THIS SECTION:

(A) THE TERMS "DISCLOSURE," "EDUCATION PROGRAM," "EDUCATION RECORDS," "ELIGIBLE STUDENT," "PARENT," "PARTY," "PERSONALLY IDENTIFIABLE INFORMATION," "RECORD," AND "STUDENT" SHALL HAVE THE SAME MEANING AS THOSE TERMS ARE DEFINED IN 34 CFR PART 99.3;

(B) THE TERM "INSTITUTION" SHALL MEAN ANY PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOL OR AN INSTITUTION THAT PROVIDES EDUCATION TO STUDENTS BEYOND THE SECONDARY EDUCATION LEVEL; SECONDARY EDUCATION SHALL HAVE THE MEANING SET FORTH IN SUBDIVISION SEVEN OF SECTION TWO OF THIS CHAPTER;

2. LIMITATIONS ON ACCESS TO, OR DISCLOSURE OF, PERSONALLY IDENTIFIABLE INFORMATION. (A) AUTHORIZED REPRESENTATIVES. THE DEPARTMENT AND DISTRICT

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

LBD09672-04-3

BOARDS OF EDUCATION SHALL ONLY DESIGNATE PARTIES THAT ARE UNDER THEIR DIRECT CONTROL TO ACT AS THEIR AUTHORIZED REPRESENTATIVES TO CONDUCT ANY AUDIT OR EVALUATION, OR ANY COMPLIANCE OR ENFORCEMENT ACTIVITY IN CONNECTION WITH LEGAL REQUIREMENTS THAT RELATE TO STATE OR DISTRICT SUPPORTED EDUCATIONAL PROGRAMS, WHEN ANY SUCH AUDIT, EVALUATION OR ACTIVITY REQUIRES OR IS USED AS THE BASIS FOR GRANTING ACCESS TO PERSONALLY IDENTIFIABLE STUDENT INFORMATION;

(B) OUTSOURCING. THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION AND INSTITUTIONS MAY NOT DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS OF STUDENTS WITHOUT THE WRITTEN CONSENT OF ELIGIBLE STUDENTS OR PARENTS TO A CONTRACTOR, CONSULTANT, OR OTHER PARTY TO WHOM AN AGENCY OR INSTITUTION HAS OUTSOURCED INSTITUTIONAL SERVICES OR FUNCTIONS UNLESS THAT OUTSIDE PARTY:

(1) PERFORMS AN INSTITUTIONAL SERVICE OR FUNCTION FOR WHICH THE DEPARTMENT, DISTRICT BOARD OF EDUCATION, OR INSTITUTION WOULD OTHERWISE USE EMPLOYEES;

(2) IS UNDER THE DIRECT CONTROL OF THE AGENCY OR INSTITUTION WITH RESPECT TO THE USE AND MAINTENANCE OF EDUCATION RECORDS;

(3) LIMITS INTERNAL ACCESS TO EDUCATION RECORDS TO THOSE INDIVIDUALS THAT ARE DETERMINED TO HAVE LEGITIMATE EDUCATIONAL INTERESTS;

(4) DOES NOT USE THE EDUCATION RECORDS FOR ANY OTHER PURPOSES THAN THOSE EXPLICITLY AUTHORIZED IN ITS CONTRACT;

(5) DOES NOT DISCLOSE ANY PERSONALLY IDENTIFIABLE INFORMATION TO ANY OTHER PARTY:

(I) WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARENT OR ELIGIBLE STUDENT, OR

(II) UNLESS REQUIRED BY STATUTE OR COURT ORDER AND THE PARTY PROVIDES A NOTICE OF THE DISCLOSURE TO THE DEPARTMENT, DISTRICT BOARD OF EDUCATION, OR INSTITUTION THAT PROVIDED THE INFORMATION NO LATER THAN THE TIME THE INFORMATION IS DISCLOSED, UNLESS PROVIDING NOTICE OF THE DISCLOSURE IS EXPRESSLY PROHIBITED BY THE STATUTE OR COURT ORDER;

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

(7) USES ENCRYPTION TECHNOLOGIES TO PROTECT DATA WHILE IN MOTION OR IN ITS CUSTODY FROM UNAUTHORIZED DISCLOSURE USING A TECHNOLOGY OR METHODOLOGY SPECIFIED BY THE SECRETARY OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES IN GUIDANCE ISSUED UNDER SECTION 13402(H)(2) OF PUBLIC LAW 111-5;

(8) HAS SUFFICIENT ADMINISTRATIVE AND TECHNICAL PROCEDURES TO MONITOR CONTINUOUSLY THE SECURITY OF PERSONALLY IDENTIFIABLE INFORMATION IN ITS CUSTODY;

(9) CONDUCTS A SECURITY AUDIT ANNUALLY AND PROVIDES THE RESULTS OF THAT AUDIT TO EACH DEPARTMENT, DISTRICT BOARD OF EDUCATION, OR INSTITUTION THAT PROVIDED EDUCATIONAL RECORDS;

(10) PROVIDES THE DEPARTMENT, DISTRICT BOARD OF EDUCATION, OR INSTITUTION WITH A BREACH REMEDIATION PLAN ACCEPTABLE TO THE DEPARTMENT, DISTRICT BOARD OF EDUCATION OR INSTITUTION PRIOR TO INITIAL RECEIPT OF EDUCATION RECORDS;

(11) REPORTS ALL SUSPECTED SECURITY BREACHES TO THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, OR INSTITUTION THAT PROVIDED EDUCATION RECORDS AS SOON AS POSSIBLE BUT NOT LATER THAN FORTY-EIGHT HOURS AFTER A SUSPECTED BREACH WAS KNOWN OR WOULD HAVE BEEN KNOWN BY EXERCISING REASONABLE DILIGENCE;

(12) REPORTS ALL ACTUAL SECURITY BREACHES TO THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, OR INSTITUTION THAT PROVIDED EDUCATION RECORDS AS

SOON AS POSSIBLE BUT NOT LATER THAN TWENTY-FOUR HOURS AFTER AN ACTUAL BREACH WAS KNOWN OR WOULD HAVE BEEN KNOWN BY EXERCISING REASONABLE DILIGENCE;

(13) IN THE EVENT OF A SECURITY BREACH OR UNAUTHORIZED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION, PAYS ALL COSTS AND LIABILITIES INCURRED BY THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, OR INSTITUTIONS RELATED TO THE SECURITY BREACH OR UNAUTHORIZED DISCLOSURE, INCLUDING BUT NOT LIMITED TO THE COSTS OF RESPONDING TO INQUIRIES ABOUT THE SECURITY BREACH OR UNAUTHORIZED DISCLOSURE, OF NOTIFYING SUBJECTS OF PERSONALLY IDENTIFIABLE INFORMATION ABOUT THE BREACH, OF MITIGATING THE EFFECTS OF THE BREACH FOR THE SUBJECTS OF PERSONALLY IDENTIFIABLE INFORMATION, AND OF INVESTIGATING THE CAUSE OR CONSEQUENCES OF THE SECURITY BREACH OR UNAUTHORIZED DISCLOSURE; AND

(14) DESTROYS OR RETURNS TO THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, OR INSTITUTIONS ALL PERSONALLY IDENTIFIABLE INFORMATION IN ITS CUSTODY UPON REQUEST AND AT THE TERMINATION OF THE CONTRACT.

(C) STUDIES. THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, OR INSTITUTIONS MAY DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION FROM AN EDUCATION RECORD OF A STUDENT WITHOUT THE CONSENT OF ELIGIBLE STUDENTS OR PARENTS TO A PARTY CONDUCTING STUDIES FOR, OR ON BEHALF OF, EDUCATIONAL AGENCIES OR INSTITUTIONS TO:

(1) DEVELOP, VALIDATE, OR ADMINISTER PREDICTIVE TESTS;

(2) ADMINISTER STUDENT AID PROGRAMS; OR

(3) IMPROVE INSTRUCTION;

PROVIDED THAT THE OUTSIDE PARTY CONDUCTING THE STUDY MEETS ALL OF THE REQUIREMENTS FOR CONTRACTORS SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION;

(D) COMMERCIAL USE PROHIBITED. THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION AND INSTITUTIONS MAY NOT, WITHOUT THE WRITTEN CONSENT OF ELIGIBLE STUDENTS OR PARENTS, DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS TO ANY PARTY FOR A COMMERCIAL USE, INCLUDING BUT NOT LIMITED TO MARKETING PRODUCTS OR SERVICES, COMPILATION OF LISTS FOR SALE OR RENTAL, DEVELOPMENT OF PRODUCTS OR SERVICES, OR CREATION OF INDIVIDUAL, HOUSEHOLD, OR GROUP PROFILES; NOR MAY SUCH DISCLOSURE BE MADE FOR PROVISION OF SERVICES OTHER THAN CONTRACTING, STUDIES, AND AUDITS OR EVALUATIONS AS AUTHORIZED AND LIMITED BY PARAGRAPHS (B) AND (C) OF THIS SUBDIVISION. ANY CONSENT FROM AN ELIGIBLE STUDENT OR PARENT MUST BE SIGNED BY THE STUDENT OR PARENT, BE DATED ON THE DAY IT WAS SIGNED, NOT HAVE BEEN SIGNED MORE THAN SIX MONTHS PRIOR TO THE DISCLOSURE, MUST IDENTIFY THE RECIPIENT AND THE PURPOSE OF THE DISCLOSURE, AND MUST STATE THAT THE INFORMATION WILL ONLY BE USED FOR THAT PURPOSE AND WILL NOT BE USED OR DISCLOSED FOR ANY OTHER PURPOSE.

3. DATA REPOSITORIES AND INFORMATION PRACTICES.

(A) THE DEPARTMENT AND DISTRICT BOARDS OF EDUCATION MAY NOT, DIRECTLY OR THROUGH CONTRACTS WITH OUTSIDE PARTIES, MAINTAIN PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS WITHOUT THE WRITTEN CONSENT OF ELIGIBLE STUDENTS OR PARENTS UNLESS MAINTENANCE OF SUCH INFORMATION IS:

(1) EXPLICITLY MANDATED IN FEDERAL OR STATE STATUTE; OR

(2) ADMINISTRATIVELY REQUIRED FOR THE PROPER PERFORMANCE OF THEIR DUTIES UNDER THE LAW AND IS RELEVANT TO AND NECESSARY FOR DELIVERY OF SERVICES; OR

(3) DESIGNED TO SUPPORT A STUDY OF STUDENTS OR FORMER STUDENTS, PROVIDED THAT NO PERSONALLY IDENTIFIABLE INFORMATION IS RETAINED ON FORMER STUDENTS LONGER THAN FIVE YEARS AFTER THE DATE OF THEIR LAST ENROLLMENT AT AN INSTITUTION.

(B) THE DEPARTMENT AND DISTRICT BOARDS OF EDUCATION SHALL PUBLICLY AND CONSPICUOUSLY DISCLOSE ON THEIR WEB SITES AND THROUGH ANNUAL ELECTRONIC NOTIFICATION TO THE CHAIRS OF THE ASSEMBLY AND SENATE EDUCATION COMMITTEES THE EXISTENCE AND CHARACTER OF ANY PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS THAT THEY, DIRECTLY OR THROUGH CONTRACTS WITH OUTSIDE PARTIES, MAINTAIN. SUCH DISCLOSURE AND NOTIFICATIONS SHALL INCLUDE:

(1) THE NAME AND LOCATION OF THE DATA REPOSITORY WHERE SUCH INFORMATION IS MAINTAINED;

(2) THE LEGAL AUTHORITY WHICH AUTHORIZES THE ESTABLISHMENT AND EXISTENCE OF THE DATA REPOSITORY;

(3) THE PRINCIPAL PURPOSE OR PURPOSES FOR WHICH THE INFORMATION IS INTENDED TO BE USED;

(4) THE CATEGORIES OF INDIVIDUALS ON WHOM RECORDS ARE MAINTAINED IN THE DATA REPOSITORY;

(5) THE CATEGORIES OF RECORDS MAINTAINED IN THE DATA REPOSITORY;

(6) EACH EXPECTED DISCLOSURE OF THE RECORDS CONTAINED IN THE DATA REPOSITORY, INCLUDING THE CATEGORIES OF RECIPIENTS AND THE PURPOSE OF SUCH DISCLOSURE;

(7) THE POLICIES AND PRACTICES OF THE DEPARTMENT OR THE DISTRICT BOARDS OF EDUCATION REGARDING STORAGE, RETRIEVABILITY, ACCESS CONTROLS, RETENTION, AND DISPOSAL OF THE RECORDS;

(8) THE TITLE AND BUSINESS ADDRESS OF THE DEPARTMENT OR DISTRICT BOARD OF EDUCATION OFFICIAL WHO IS RESPONSIBLE FOR THE DATA REPOSITORY, AND THE NAME AND BUSINESS ADDRESS OF ANY CONTRACTOR OR OTHER OUTSIDE PARTY MAINTAINING THE DATA REPOSITORY FOR OR ON BEHALF OF THE DEPARTMENT OR THE DISTRICT BOARD OF EDUCATION;

(9) THE PROCEDURES WHEREBY ELIGIBLE STUDENTS OR PARENTS CAN BE NOTIFIED AT THEIR REQUEST IF THE DATA REPOSITORY CONTAINS A RECORD PERTAINING TO THEM OR THEIR CHILDREN;

(10) THE PROCEDURES WHEREBY ELIGIBLE STUDENTS OR PARENTS CAN BE NOTIFIED AT THEIR REQUEST HOW TO GAIN ACCESS TO ANY RECORD PERTAINING TO THEM OR THEIR CHILDREN CONTAINED IN THE DATA REPOSITORY, AND HOW THEY CAN CONTEST ITS CONTENT; AND

(11) THE CATEGORIES OF SOURCES OF RECORDS IN THE DATA REPOSITORY;

(C) THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, AND INSTITUTIONS MAY NOT APPEND EDUCATION RECORDS WITH PERSONALLY IDENTIFIABLE INFORMATION OBTAINED FROM OTHER FEDERAL OR STATE AGENCIES THROUGH DATA MATCHES WITHOUT THE WRITTEN CONSENT OF ELIGIBLE STUDENTS OR PARENTS UNLESS SUCH DATA MATCHES ARE: (1) EXPLICITLY MANDATED IN FEDERAL OR STATE STATUTE; OR (2) ADMINISTRATIVELY REQUIRED FOR THE PROPER PERFORMANCE OF THEIR DUTIES UNDER THE LAW AND ARE RELEVANT TO AND NECESSARY FOR DELIVERY OF SERVICES.

4. PENALTIES AND ENFORCEMENT. (A) EACH VIOLATION OF ANY PROVISION OF THIS SECTION BY AN ORGANIZATION OR ENTITY THAT IS NOT THE DEPARTMENT, A DISTRICT BOARD OF EDUCATION, OR AN INSTITUTION AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL PENALTY OF UP TO ONE THOUSAND DOLLARS; A SECOND VIOLATION BY THE SAME ORGANIZATION OR ENTITY INVOLVING THE EDUCATIONAL RECORDS AND PRIVACY OF THE SAME STUDENT SHALL BE PUNISHABLE BY A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS; ANY SUBSEQUENT VIOLATION BY THE SAME ORGANIZATION OR ENTITY INVOLVING THE EDUCATIONAL RECORDS AND PRIVACY OF THE SAME STUDENT SHALL BE PUNISHABLE BY A CIVIL PENALTY OF UP TO TEN THOUSAND DOLLARS; AND EACH VIOLATION INVOLVING A DIFFERENT INDIVIDUAL EDUCATIONAL RECORD OR A DIFFERENT INDIVIDUAL STUDENT SHALL BE CONSIDERED A SEPARATE VIOLATION FOR PURPOSES OF CIVIL PENALTIES;

(B) THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO ENFORCE COMPLIANCE WITH THIS SECTION BY INVESTIGATION AND SUBSEQUENT COMMENCEMENT OF A CIVIL ACTION, TO SEEK CIVIL PENALTIES FOR VIOLATIONS OF THIS SECTION, AND TO SEEK APPROPRIATE INJUNCTIVE RELIEF, INCLUDING BUT NOT LIMITED TO A PROHIBITION ON OBTAINING PERSONALLY IDENTIFIABLE INFORMATION FOR AN APPROPRIATE TIME PERIOD. IN CARRYING OUT SUCH INVESTIGATION AND IN MAINTAINING SUCH CIVIL ACTION THE ATTORNEY GENERAL OR ANY DEPUTY OR ASSISTANT ATTORNEY GENERAL IS AUTHORIZED TO SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER OATH AND REQUIRE THAT ANY BOOKS, RECORDS, DOCUMENTS, PAPERS, OR ELECTRONIC RECORDS RELEVANT OR MATERIAL TO THE INQUIRY BE TURNED OVER FOR INSPECTION, EXAMINATION OR AUDIT, PURSUANT TO THE CIVIL PRACTICE LAW AND RULES; SUBPOENAS ISSUED PURSUANT TO THIS PARAGRAPH MAY BE ENFORCED PURSUANT TO THE CIVIL PRACTICE LAW AND RULES.

(C) NOTHING CONTAINED HEREIN SHALL BE CONSTRUED AS CREATING A PRIVATE RIGHT OF ACTION AGAINST THE DEPARTMENT, A DISTRICT BOARD OF EDUCATION, OR AN INSTITUTION AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION.

5. ADMINISTRATIVE USE. NOTHING IN THIS SECTION SHALL LIMIT THE ADMINISTRATIVE USE OF EDUCATION RECORDS BY A PERSON ACTING EXCLUSIVELY IN THE PERSON'S CAPACITY AS AN EMPLOYEE OF A SCHOOL, A DISTRICT BOARD OF EDUCATION OR OF THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, ANY COURT OR THE FEDERAL GOVERNMENT THAT IS OTHERWISE REQUIRED BY LAW.

S 2. This act shall take effect July 1, 2014 and shall apply to school years beginning with the 2014-2015 academic year.