



# Ohio Legislative Service Commission

## Bill Analysis

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### **Am. Sub. H.B. 181** 130th General Assembly (As Passed by the House)

**Reps.** Brenner, J. Adams, Stautberg, Roegner, Huffman, Buchy, Becker, Terhar, Henne, Young, Hood, Retherford, Lynch, Blair, Barnes, Damschroder, Hayes, Rosenberger, Smith, Stebelton, Batchelder

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## **BILL SUMMARY**

- Specifies that no state law, rule of the State Board of Education, or other regulation or guideline from the Department of Education may require a public school to submit a student's personally identifiable information to the federal government.
- Permits a school's governing board to submit a student's personally identifiable information (for which consent is required) to the federal government, if the governing board has adopted a resolution approving such a submission.
- Prohibits the Department from releasing personally identifiable information or student data to any federal, state, or local agency, or other organization, except under certain circumstances.
- Prohibits the Department, any school district, any school, or any third party under contract with those entities from providing the names and addresses of students to any multi-state assessment consortium without written permission.
- Defines "personally identifiable information" as a student's name, the name of the student's parent or other family member, the address of the student or student's family, a personal identifier, such as the student's social security number or student number, a list of personal characteristics that would make the student's identity easily traceable, or other information that would make the student's identity easily traceable.
- Unless otherwise approved by the State Board, prohibits the Department from releasing personally identifiable information or student data to and federal, state, or local agency, except under certain circumstances.

- Removes from the state statutory definition of "directory information" a student's date and place of birth and, instead, adds the student's year of birth to the definition.
- Requires each school district annually, prior to the first day of August, to publish on the district web site a list of entities to which directory information was released during the previous year.
- Requires the Department, by September 1 of each year, to establish and publish a data inventory and a dictionary or index of data elements.
- Requires the Department, by September 1 of each year, to develop and publish policies and procedures to maintain compliance with all relevant state and federal privacy laws and policies.
- Requires the Department, by September 1 of each year, to develop criteria to approve research and data requests.
- Requires the Department to develop a detailed data security plan.
- Requires the Department to ensure that any contracts with private vendors that govern the vendors' use of databases, assessments, or instructional supports that include student or redacted data include express provisions that safeguard privacy and security and penalties for noncompliance.
- Requires the Department annually to provide information to the Governor and General Assembly regarding data collections.
- Requires the State Board to adopt rules as necessary to implement the provisions of the bill not less than 180 days after the bill's effective date.
- Entitles the bill the "Student Data Accountability Act."

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## CONTENT AND OPERATION

### Restrictions on disclosing student information

#### Schools

The bill specifies that no "public school" can be required by state law, any rule of the State Board of Education, or other regulation or guideline of the Ohio Department of Education to submit personally identifiable information (see "**Personally identifiable information definition**" below) of a student to any office, agency, or

department of the federal government.<sup>1</sup> Under the bill, the term "public school" includes school districts, individual school buildings, community schools, STEM schools, and college-preparatory boarding schools.<sup>2</sup>

The bill also specifies that no public school may submit a student's personally identifiable information for which consent is required to any office, agency, or department of the federal government, unless the school's "governing board" has adopted a resolution approving the submission of the information. The bill also specifically includes any information that may be required to receive a grant under the federal Race to the Top program as information that cannot be submitted, unless the school's governing board has adopted a resolution approving the submission of such information.<sup>3</sup>

In other words, the bill authorizes, but does not require, the unconsented release of a student's personally identifiable information by a school's governing board to the federal government, if the governing board has adopted a resolution approving such a release. Alternatively, it appears, if consent is granted, the bill authorizes a school's governing board to submit a student's personally identifiable information to the federal government *without* such a resolution. The bill does not specify who must grant consent, but presumably it must be granted by the student's parent or the student, if at least 18 years of age in accordance with separate state and federal law not affected by the bill.

In the case of a school whose governing authority adopts a resolution to submit personally identifiable student information to the federal government, the bill requires that school to develop and publish criteria, policies, and procedures for the submission of the data that is in compliance with all relevant privacy laws and policies, including the Family Educational Rights and Privacy Act<sup>4</sup> (FERPA) and state policies required under the bill.<sup>5</sup>

### **Personally identifiable information definition**

"Personally identifiable information" is defined by the bill to include a student's name, the name of a student's parent or other family member, a student's address or the

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<sup>1</sup> R.C. 3301.945(A).

<sup>2</sup> R.C. 3314.03, 3326.11, and 3328.24.

<sup>3</sup> R.C. 3301.945(B).

<sup>4</sup> 20 United States Code (U.S.C.) 1232g.

<sup>5</sup> R.C. 3301.945(C).



address of a student's family, a personal identifier, such as the student's social security number or student number, a list of personal characteristics that would make the student's identity easily traceable, or other information that would make the student's identity easily traceable.<sup>6</sup>

### **Department of Education**

Unless otherwise approved by the State Board of Education, and to the extent it does not conflict with FERPA, the bill also prohibits the Department of Education from releasing personally identifiable information or student data to any federal, state, or local agency, or other organization, except under the following circumstances:

(1) A student transfers to a primary or secondary school out-of-state or a school seeks help with locating an out-of-state transfer;

(2) A student leaves the state to attend an out-of-state institution of higher education or training program;

(3) A student voluntarily participates in a program for which the release of student or confidential data is a condition or requirement of participation;

(4) The Department enters into a contract that governs databases, assessments, special education, or instructional supports with an out-of-state contractor for the purpose of state-level reporting;

(5) A student is classified as a "migratory child;"<sup>7</sup> or

(6) A federal agency is performing a compliance review.<sup>8</sup>

### **Information to a multi-state consortium**

The bill prohibits the Department of Education, any school district, any school, or any third party under contract with those entities to provide student names and addresses to any multi-state consortium that offers summative assessments without written permission from the student's parent. The Partnership for Assessment of Readiness for Colleges and Careers (PARCC) is an example of a multi-state consortium that offers summative assessments.<sup>9</sup>

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<sup>6</sup> R.C. 3301.942(D).

<sup>7</sup> See 20 U.S.C. 6399(2).

<sup>8</sup> R.C. 3301.944(A)(3).

<sup>9</sup> R.C. 3301.946.



## Directory information

### Definition

The bill removes from the definition of "directory information" in state statutory law a student's date and place of birth. Instead, it adds the student's year of birth to the definition.<sup>10</sup>

### Release disclosure

The bill requires each school district board of education annually, prior to the first day of August, to publish on the district web site a list of entities to which directory information was released during the previous year.<sup>11</sup>

## Data inventory and dictionary

The bill requires the Department of Education, by September 1 of each year, to establish and publish a data inventory and a dictionary or index of data elements with definitions of individual student data fields in the statewide education data repository that gives an overview of what student data elements are collected and the reason for that collection. The inventory and dictionary or index must include all of the following:

(1) Any individual student data elements required to be reported by state or federal mandate;

(2) Any individual student data elements proposed for inclusion in the statewide education data repository, with a statement regarding the purpose or reason for the proposed collection;

(3) Any individual student data elements that the State Board or Department collects or maintains with no current identified purpose;

(4) Any other student data elements the State Board or Department collects for any other purpose, with a statement regarding the purpose or reason for the collection.<sup>12</sup>

## Privacy law compliance, policies, and procedures

The bill requires the Department of Education, by September 1 of each year, to develop and publish policies and procedures to maintain compliance with all relevant

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<sup>10</sup> R.C. 3319.321(B)(1).

<sup>11</sup> R.C. 3319.321(B)(6).

<sup>12</sup> R.C. 3301.943(A).



state and federal privacy laws and policies, including FERPA. Those policies and procedures must include a procedure for notifying parents and students of their privacy rights. Further, the policies and procedures may permit access to student data only to the following individuals:

(1) Authorized staff of the Department and contractors working on behalf of the Department who need the access to perform their assigned duties required by law or as defined by interagency data-sharing agreements;

(2) District and school administrators, teachers, and school personnel who require access to perform their assigned duties;

(3) Students and their parents;

(4) The authorized staff of other agencies as required by law or as defined by interagency data-sharing agreements.<sup>13</sup>

The bill also requires the Department to notify the General Assembly of any additions or changes to the data fields to be collected not less than 60 days prior to implementation of those additions or changes.<sup>14</sup>

## **Management of student data**

### **Criteria for approval of research and data requests**

The bill requires the Department of Education, by September 1 of each year, to develop criteria to approve research and data requests from state and local agencies, the General Assembly, researchers working on behalf of the Department, and the public. Specifically, the bill prescribes that, unless otherwise approved by the State Board, student data maintained by the Department must remain confidential. Further, unless otherwise approved by the State Board, the bill prescribes that the Department may use only aggregate data when responding to data requests and compiling reports.<sup>15</sup>

### **Data security plans**

The bill requires the Department to develop a detailed data security plan that contains all of the following:

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<sup>13</sup> R.C. 3301.943(B) and 3301.944(C).

<sup>14</sup> R.C. 3301.943(C).

<sup>15</sup> R.C. 3301.944(A)(1) and (2).



(1) Guidelines for authorizing access to the student statewide education data repository and to individual student data, including guidelines for authentication of authorized access;

(2) Privacy compliance standards;

(3) Privacy and security audits;

(4) Planning, notification, and procedures in case of a security breach;

(5) Data retention and disposition policies;

(6) Data security policies, including electronic, physical, and administrative safeguards, such as data encryption and employee training.<sup>16</sup>

### **Private vendor contracts**

The bill requires the Department to ensure that any contracts with private vendors that govern the vendors' use of databases, assessments, or instructional supports that include student or redacted data include express provisions that safeguard privacy and security and penalties for noncompliance.<sup>17</sup>

### **Data collection reports**

The bill requires the Department annually to provide information to the Governor and General Assembly regarding data collections. The information must include all of the following:

(1) Any new student data elements proposed for inclusion in the statewide education data repository;

(2) Changes to existing data collections required for any reason, including those made as a result of changes to federal reporting requirements;

(3) An explanation of any exceptions granted by the State Board in the past year regarding the release of student or redacted data;

(4) The results of any and all privacy compliance and security audits completed in the past year. However, notifications regarding privacy compliance and security audits shall not include information that poses a security threat to the state or local

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<sup>16</sup> R.C. 3301.944(B).

<sup>17</sup> R.C. 3301.944(D).



student information systems or to the secure transmission of data between state and local systems.<sup>18</sup>

The bill prescribes that student data collection proposed on or after the bill's effective date must be provisionally required for one school year following its introduction as a new requirement. Collection of data by the Department prior to the bill's effective date is not considered "proposed" data collection for purposes of the bill.<sup>19</sup> Finally, the bill requires the Department to announce any proposed student data collection to the general public for a review and comment period of at least 60 days prior to implementing such data collection.<sup>20</sup>

### **Rule-making authority**

The bill requires the State Board of Education to adopt rules necessary to implement the provisions of the bill not less than 180 days after the bill's effective date.<sup>21</sup>

### **Designation of the bill's provisions**

The bill specifies that its student data handling provisions are to be collectively known as the "Student Data Accountability Act."<sup>22</sup>

### **Background**

Ohio law prohibits the reporting of a student's name, address, and social security number to the State Board of Education or the Ohio Department of Education.<sup>23</sup> Moreover, the reporting of any personally identifiable information about any student is prohibited, except in certain cases (see "**Permitted release of student information**" below).

The federal Family Educational Rights and Privacy Act (FERPA) controls the handling and release of student information by primary and secondary schools and higher education institutions that receive federal financial assistance.<sup>24</sup> An Ohio state

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<sup>18</sup> R.C. 3301.944(E)(1).

<sup>19</sup> R.C. 3301.944(E)(2).

<sup>20</sup> R.C. 3301.944(E)(3).

<sup>21</sup> R.C. 3301.943(D).

<sup>22</sup> R.C. 3301.942.

<sup>23</sup> R.C. 3301.0714(D), not in the bill.

<sup>24</sup> U.S.C. 1232g.





statute implements FERPA. Those laws generally prohibit the unconsented release of personally identifiable information contained in a student's education records, except for directory information, such as student's name, address, and telephone number.<sup>25</sup> A student's "education records" (called "school records" in the state statute) include any information, other than directory information, related to the student that contains "personally identifiable information" and that is actually maintained by the educational institution.<sup>26</sup>

FERPA regulations (but not the federal statute itself) specify that "personally identifiable information" includes the student's name, names of the student's parents or other family member, address of the student or the student's family, a personal identifier, such as the student's social security number or student identification number, or other information that would make the student's identity easily traceable.<sup>27</sup> The regulations further define directory information as "information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed." The regulations also add a student's grade level, photograph, and e-mail address to the list of items that may be directory information. Neither the FERPA statute nor the state statute includes those items in the definition of directory information.<sup>28</sup>

### **Permitted release of student information**

Ohio law states that contractors employed by the Ohio Department of Education are authorized to have student personally identifiable information for purposes of creating student statewide identification numbers that the Department uses to track student data and for purposes of developing the state achievement assessments. It also permits the Department to have access to a student's personally identifiable information in order to administer state scholarship programs.<sup>29</sup>

FERPA permits the unconsented release of personally identifiable information only under specific exceptions to the general prohibition. These exceptions include, among others, release to (1) other school officials for "legitimate educational interests" of the child, (2) certain state and federal officials for specified reasons, (3) juvenile justice officials (not law enforcement officers), but only in relation to the ability to effectively

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<sup>25</sup> R.C. 3319.321.

<sup>26</sup> 20 U.S.C. 1232g(a)(4).

<sup>27</sup> 34 Code of Federal Regulations (C.F.R.) 99.3.

<sup>28</sup> 34 C.F.R. 99.3.

<sup>29</sup> R.C. 3301.0714(D).



serve the student prior to adjudication, and (4) protect the student or other person in case of an imminent health risk.<sup>30</sup>

As stated above, FERPA permits directory information, which includes a student's grade level, photograph, telephone number, and e-mail address, to be subject to unconsented release. However, the state implementing statute outright prohibits the release of even directory information for use in a "profit-making plan or activity."<sup>31</sup>

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## HISTORY

ACTION	DATE
Introduced	05-29-13
Reported, H. Education	12-05-13
Passed House (87-6)	12-11-13

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<sup>30</sup> 20 U.S.C. 1232g(b).

<sup>31</sup> R.C. 3319.321(A).

