

CORRECTED
SESSION OF 2014

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 367**

As Agreed to April 4, 2014

Brief*

SB 367, the Student Data Privacy Act, would provide restrictions on what data contained in a student's educational record can be disclosed, and to whom it may be disclosed. The bill would require that any student data submitted to and maintained by a statewide longitudinal student data system could be disclosed only to individuals or organizations as outlined in the bill.

Under the bill, educational agencies (school districts or the State Department of Education) would be required to give annual written notice that student data may be disclosed as outlined in the Act. The notice must be signed and returned by the student's parent or legal guardian, and the district must keep it on file.

The bill would permit student data to be disclosed at any time to the following:

- The student and the student's parent or legal guardian, but only if the data pertains solely to that student;
- Authorized personnel of an educational agency or the Kansas Board of Regents who require such disclosures to perform their assigned duties; and
- Any authorized personnel of any state agency with a data sharing agreement between the state agency and the educational institution.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Authorization would be granted for disclosure of student data to any state agency not specified above, or to a service provider of a state agency, educational agency or school who is engaged to perform a specified educational service, provided there is a data-sharing agreement between the relevant educational agency and the state agency or service provider that provides for specific procedures, including data security and destruction or return of the data at the appropriate specified time. (Destruction of data would be required to comply with National Institute of Standards and Technology requirements.) An exception to the data destruction requirement of student transcripts is provided for a service provider engaged to perform an instructional function, if retention of the transcripts is required by applicable laws and rules and regulations.

The bill would permit student data to be disclosed to any governmental entity not otherwise specified or to any public or private audit and evaluation or research organization, provided the data disclosed is aggregate and contains no personally identifiable student information. Personally identifiable information could be disclosed if an adult student or a minor student's parent or legal guardian consents in writing. The terms "aggregate data" and "personally identifiable data" are defined in the bill and are exclusive of each other.

In addition, an educational agency would be allowed to disclose the following:

- Directory information when the agency deems disclosure is necessary and if consent is given in writing by a student's parent or legal guardian.
- Directory information to such entities as yearbook publishing companies and class ring vendors, including a student's name, address, telephone listing, and other specified information.
- Student data to a postsecondary institution that is required by the postsecondary institution for application or admission.

- Any student data required to comply with a subpoena or court order.
- Any information required to be disclosed to public health officials for urgent health or safety reasons, in which cases confidentiality requirements apply.

The bill would prohibit school districts from collecting biometric data or assessing a student's emotional state unless written consent is granted. The bill also would require the Department of Education to publish annually on its website a list of the categories of student data that are collected by any statewide longitudinal student data system.

The bill would prohibit the administration of any test, questionnaire, survey, or examination containing questions regarding a student's or student's parents' or guardians' beliefs or practices on issues such as sex, family life, morality, or religion, unless permission is requested in writing and granted by a student's parent or guardian. The bill would further state that this section is not to prohibit school counselors from providing counseling services to a student but would restrict how information obtained through these services could be stored, specifically by prohibiting the storing of such information on any personal mobile electronic device not owned by the school district.

In the event of a security breach or unauthorized disclosure of personally identifiable student data, the State Board, local school district board, or any entity having access to the data would be required to notify the subjects of the breach or disclosure and conduct an investigation into the cause and consequences.

The bill would grant the Attorney General or any district attorney authority to enforce the first eight sections of the Act, described above.

The bill would require the State Board of Education to submit a written report to the Governor and the Legislature by May 15, 2015, and each year thereafter, that includes:

- Categories of student data collected;
- Changes to existing data collection, including federal reporting requirements;
- Explanations of any exceptions made related to student data releases; and
- Scope and nature of any privacy or security audits.

Finally, the bill would amend KSA 2013 Supp. 72-6214, by doing the following:

- Requiring the Kansas Board of Regents, the State Board of Education, the board of trustees of any public community college, the board of regents of any municipal university, the governing board of any technical college, and the board of education of any school district to adopt a policy in accordance with the Student Data Privacy Act, in addition to applicable federal laws and regulations to protect the right of privacy for students.
- Deleting the statement that this section of law controls when there is a conflict between it and any other provision of law.

Conference Committee Action

The Senate conferees agreed to the House amendments, with the following changes and additions:

- Add a definition of “personally identifiable student data” to mean student data that, alone or in combination, is linked or linkable to a specific student and could lead reasonably to the student’s identification.
- Clarify the distinction between “aggregate data” and “personally identifiable data” by revising the definition of the former to exclude the latter.

- Add educational agency and school to the list of entities for which a service provider could be engaged to perform an educationally related function, and from which student data may be disclosed to such service provider under the circumstances specified in the bill. The Conference Committee also added an exception to one such circumstance, regarding when data must be destroyed. The exception would be for a service provider engaged to perform a function of instruction to be able to retain student transcripts as required by applicable laws and rules and regulations.
- Clarify that the section prohibiting the administration of any test, questionnaire, survey or examination containing questions about a student's personal beliefs or practices on certain issues does not prohibit school counselors from providing counseling services to a student. These counseling services would include the administration of tests and forms. Any information obtained through these tests or services must not be stored on any personal mobile electronic device that is not owned by the school district.
- Make revisions to KSA 72-6214, regarding laws relating to right of privacy policies.
- Predicate the authority to disclose any student data at any time, to various entities and personnel, on the condition that an educational agency receives a signed form providing written consent to the disclosure of student data from the student's parent or legal guardian.
- Add a condition under which an educational agency may disclose student data, that being to a postsecondary institution when the data are required by the postsecondary institution for

application or admission, provided written consent is given.

- Make a number of technical changes.

Background

Proponents at the hearing before the Senate Committee on Education included representatives from Educational Management Consultants and the Kansas Association of School Boards.

A representative of the Kansas Department of Health and Environment testified regarding concerns that the bill may impede the work of local health departments to prevent and control infectious diseases because it would not allow for disclosure of student data to public health officials for urgent health or safety reasons. A representative of the Kansas Board of Regents asked for a technical amendment to remove references to postsecondary educational institutions, since those institutions are not involved in the activities addressed in the bill.

The Senate Committee on Education amended the bill to allow for disclosure of student data to public health officials for urgent health or safety reasons and to make technical changes.

Testifying in favor of the bill at the House Education Committee hearing was a representative of the Kansas Association of School Boards, who supported a balance between student and family privacy and the appropriate use of educational data. Opponents included Representative Bradford, representatives of Concerned Women for America and an educational management consulting firm, a data security expert, and several parents. Opponents indicated the bill as amended by the Senate did not meet the intended concerns regarding data security, and an amendment was offered for the purpose of tightening the bill's provisions and including a measure regarding data security breaches. A

representative of the Kansas Department of Education testified neutrally, requesting a technical amendment.

The House Education Committee amendment added language prohibiting certain questions to be asked on tests and surveys, unless granted permission by a student's parent or guardian. The Committee added a requirement for a data collection report to be submitted to the Governor and Legislature by May 15, 2015. The Committee also inserted a requirement related to notification and investigation of security breaches.

The House Committee of the Whole added an amendment removing references to the federal Family Educational Rights and Privacy Act; added a provision allowing certain student information to be given for inclusion in directories, such as to class ring vendors, with written permission; added a provision allowing student information to be provided to a service provider of a state agency engaged to perform a function of instruction, assessment, or longitudinal reporting; and added requirements relating to the destruction of data.

According to the fiscal note prepared by the Division of the Budget, the State Department of Education indicates enactment of the bill, as introduced, would have no fiscal effect.

Education; student data privacy act

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