

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 833 (Senator Young)
Education, Health, and Environmental Affairs

**Educational Agencies and Institutions - Education Records - Disclosure of
Personally Identifiable Information**

This bill limits the disclosure of personally identifiable information from education records by an educational agency or institution (*i.e.*, the Maryland State Department of Education (MSDE); the Maryland Higher Education Commission (MHEC); a local board of education; a local school system; or a public or private primary school, secondary school, or institution of postsecondary education) – except in specified circumstances or under specified conditions. Violators, excluding an educational agency or institution, are subject to maximum penalties of (1) \$1,000 for a first violation; (2) \$5,000 for a second violation involving the same student; and (3) \$10,000 for any subsequent violation involving the same student. Each violation involving a different individual education record or student must be considered a separate violation. The bill may not be construed to (1) create a private right of action against an educational agency or institution or (2) limit an administrative use of education records that is otherwise required by law and conducted by a person acting solely in the person’s capacity as an employee of a local board, a local school system, a State agency, a political subdivision of the State, a court, or the federal government.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: MSDE and MHEC can meet the requirements of the bill using existing resources. Potential minimal increase in general fund revenues due to the bill’s penalty provision.

Local Effect: Local school systems and boards of education can handle the bill’s requirements with existing resources.

Small Business Effect: Minimal. Private schools and consultants and contractors working for MSDE, MHEC, or local school systems, some of whom are small businesses, may incur additional costs to comply with the bill.

Analysis

Bill Summary:

Education Records

“Education records” is defined as information recorded in any way that directly relates to a student and is maintained by an educational agency or institution or by a person acting for the agency or institution. Education records include records relating to an individual in attendance at an educational agency or institution who is employed as a result of the individual’s status as a student.

Education records do not include (1) records that are kept in the sole possession of the maker, used only as a personal memory aid, and are not accessible or revealed to any person other than a temporary substitute for the maker of the record or (2) records of a law enforcement unit of an educational agency or institution. Except as otherwise provided in the bill, educational records do not include records relating to an individual who is employed by an educational agency or institution that (1) are made and maintained in the normal course of business; (2) relate solely to the individual in the individual’s capacity as an employee; and (3) are not available for use for any other purpose.

Education records also do not include the records of a student who is at least age 18 or attending an institution of postsecondary education that are (1) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional or paraprofessional capacity; (2) made, maintained, or used only in connection with treatment of the student; and (3) disclosed only to individuals who are providing treatment other than remedial educational activities or activities that are part of the program of instruction.

Finally, education records do not include records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual’s attendance as a student or grades on peer-graded papers before the grades are collected and recorded by a teacher.

Educational Agency or Institution

“Educational agency or institution” includes MSDE; MHEC; a local board of education; a local school system; and a public or private primary school, secondary school, or institution of postsecondary education. “Educational agency or institution” does not include the Maryland Longitudinal Data System.

Personally Identifiable Information

“Personally identifiable information” is defined as information related to an individual student. It includes (1) the name of the student; (2) the name of a parent or any other family member; (3) the postal address of a student or a family member; (4) a personal identifier, including a Social Security number, student identification number, or biometric record; (5) an indirect identifier, including date of birth, place of birth, or mother’s maiden name; (6) other specified information that would allow a reasonable individual in the school community to identify a student with reasonable certainty; and (7) information requested by an individual who the educational agency or institution reasonably believes knows the identity of the student.

Disclosure of Personally Identifiable Information

An educational agency or institution may designate a person as an authorized representative to conduct an audit, an evaluation, or a compliance or enforcement activity that requires, or is used as the basis for granting access to, personally identifiable information only if the person is under the direct control of the educational agency or institution.

Unless 14 specified requirements are met, including a security breach remediation plan related to unauthorized disclosure of personally identifiable information, an educational agency or institution may not disclose personally identifiable information from education records to a contractor, a consultant, or any other person without the written consent of a parent, a guardian, or an eligible student (*i.e.*, at least age 18 or attending an institution of postsecondary education).

An educational agency or institution *may* disclose personally identifiable information for education records without written consent if the student who is at least age 18 or attending an institution of postsecondary education to a person that meets the specified requirements and is conducting a study for or on behalf of an educational agency or institution to achieve specified objectives.

An educational agency or institution may not disclose personally identifiable information from education records without written consent to a person for a commercial use or the

provision of any services other than contracting, studies, audits, or evaluation that comply with specified provisions. The written consent must contain specified elements.

Reporting Requirements

MSDE, MHEC, each local board, and each local school system must disclose the existence and character of any personally identifiable information from education records that the agency maintains, directly or through contracts with other persons, by publication on the website of the agency, including specified information. MSDE, MHEC, each local board, and each local school system must report annually to the General Assembly the information required to be disclosed on its website.

Data Limits

An educational agency or institution may not retain personally identifiable information on a former student for more than five years after a student is enrolled at any educational institution in the State. Further, an educational agency or institution may not append personally identifiable information obtained from federal or State agencies through a data match to education records without the written consent of a parent, a guardian, or an eligible student unless the match is (1) explicitly mandated in federal or State law or (2) administratively required for the proper performance of legal duties of the educational agency or institution and relevant to and necessary for delivery of services.

Current Law/Background: Chapter 452 of 2010 established that, after June 1, 2010, a department or an independent unit in the State, to the extent practical, may not publicly post or display an individual's personal information on a website maintained or paid for by the department or independent unit. Additionally, a person whose personal information is contained in a public record or report may request the information be masked in the Internet version of the public record. An official custodian must then mask the public record within 30 days of the request and give the requestor a written notice of the action taken.

Disclosure of personally identifiable information by educational institutions is not specifically addressed in statute; however, educational agencies and institutions are bound by the federal Family Educational Rights and Privacy Act (FERPA) to protect the privacy of student and family information. In addition, MSDE follows guidelines specified by the Maryland Department of Information Technology's Information Security Policy.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education, Maryland Higher Education Commission, Judiciary (Administrative Office of the Courts), Carroll and Harford counties, Department of Legislative Services

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