

Senate Bill 157

By: Senators Ligon, Jr. of the 3rd, Hill of the 32nd, Williams of the 19th, McKoon of the 29th, Crane of the 28th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 20 of the Official Code of Georgia Annotated, relating to
2 general provisions relating to education, so as to establish limitations and requirements
3 regarding student data; to provide for definitions; to provide for limitations on the collection
4 of student information; to provide for limitations on the disclosure of personally identifiable
5 information to third parties; to provide for penalties and enforcement; to provide for related
6 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 1 of Title 20 of the Official Code of Georgia Annotated, relating to general
11 provisions relating to education, is amended by adding a new article to read as follows:

12 "ARTICLE 3

13 20-1-30.

14 (a) As used in this article, the term:

15 (1) 'Department' means the Georgia Department of Education.

16 (2) 'School' means any public early care and learning program, elementary or secondary
17 school, or governing council of a charter school in this state.

18 (3) 'State agency' means the department, the State Board of Education, the Office of
19 Student Achievement, the Georgia Department of Early Care and Learning, any regional
20 educational service agency, or any other state pre-kindergarten through grade 12
21 education related entity, including any education related foundation or nonprofit entity
22 established by Georgia statute or which derives its authority from Georgia statutes.

23 (4) 'Student data base' means any computer system that houses or maintains data on
24 Georgia students in pre-kindergarten through grade 12.

25 (5) 'Written consent' means a consent form that is signed and dated by the eligible
 26 student or parent within six months before the disclosure of specific student information,
 27 identifies the recipient of the information and the purpose of the disclosure, and states
 28 that the information will only be used for such purpose and will not be used or disclosed
 29 for any other purpose.

30 (b) As used in this article, the terms 'disclosure,' 'education program,' 'education records,'
 31 'eligible student,' 'parent,' 'party,' 'personally identifiable information,' 'record,' and 'student'
 32 shall have the same meaning as such terms are defined in the regulations (34 C.F.R. Part
 33 99.3) promulgated under the Family Educational Rights and Privacy Act in effect as of
 34 January 1, 2015.

35 20-1-31.

36 (a)(1) State agencies, local boards of education, and schools shall not, directly or through
 37 contracts with outside parties, maintain personally identifiable information from
 38 education records without the written consent of eligible students or parents unless
 39 maintenance of such information is:

40 (A) Explicitly mandated in federal or state statute;

41 (B) Administratively required for the proper performance of such agency, board, or
 42 school's duties under the law and is relevant to and necessary for delivery of services;

43 or

44 (C) Designed to support a study of students or former students, provided that no
 45 personally identifiable information is retained on former students longer than five years
 46 after the date of their last enrollment at a school.

47 (2) Except as required by the federal Individuals with Disabilities Education Act, 20
 48 U.S.C. Section 1400, et seq., the following information shall not be collected, entered into
 49 any student data base, or maintained as education records by a state agency, local board
 50 of education, or school:

51 (A) DNA, fingerprint, retina or iris pattern information, or any information about
 52 personal psychological characteristics of any student;

53 (B) Student or family religious affiliation, beliefs, or practices, provided that released
 54 time activities or diet accommodations or other such on-site, school related
 55 record-keeping needs are not prohibited;

56 (C) Student or family political affiliation, beliefs, or practices;

57 (D) Student or family member sexual orientation or beliefs about sexual orientation;

58 or

59 (E) Student or family gun ownership or usage.

60 (3) No state agency, local board of education, or school shall pursue or accept any grant,
 61 whether governmental or private, that would require the collection or reporting of any of
 62 the student information contained in paragraph (2) of this subsection.

63 (4) State agencies, local boards of education, and schools shall publicly and
 64 conspicuously disclose on their web sites and through annual electronic notification to
 65 the Governor, Lieutenant Governor, Speaker of the House of Representatives, and
 66 chairpersons of the Senate Education and Youth Committee and the House Committee
 67 on Education the existence and character of any personally identifiable information from
 68 education records that they, directly or through contracts with outside parties, maintain.
 69 Such disclosure and notifications shall include:

70 (A) The name and location of the data repository where such information is
 71 maintained;

72 (B) The legal authority that authorizes the establishment and existence of the data
 73 repository;

74 (C) The principal purpose or purposes for which the information is intended to be used;

75 (D) The categories of individuals on whom records are maintained in the data
 76 repository;

77 (E) The categories of records maintained in the data repository;

78 (F) Each expected disclosure of the records contained in the data repository, including
 79 the categories of recipients and the purpose of such disclosure;

80 (G) The policies and practices of the state agencies or local boards of education
 81 regarding storage, retrievability, access controls, retention, and disposal of the records;

82 (H) The title and business address of the state agency, local board of education, or
 83 school official who is responsible for the data repository, and the name and business
 84 address of any contractor or other outside party maintaining the data repository for or
 85 on behalf of the state agency, local board of education, or school;

86 (I) The procedures whereby eligible students or parents can be notified at their request
 87 if the data repository contains a record pertaining to them or their children;

88 (J) The procedures whereby eligible students or parents can be notified at their request
 89 how to gain access to any record pertaining to them or their children contained in the
 90 data repository, and how they can contest its content; and

91 (K) The categories of sources of records in the data repository.

92 (b)(1) Except as otherwise authorized by this Code section, access to personally
 93 identifiable information in the student data base shall be restricted to the authorized
 94 representatives of the state agency, local board of education, or school who require such
 95 access to perform their assigned duties. The state agencies, local boards of education,
 96 and schools shall only designate parties that are under their direct control to act as their

97 authorized representatives to conduct any audit or evaluation, or any compliance or
98 enforcement activity in connection with legal requirements that relate to state or school
99 system supported educational programs, when any such audit, evaluation, or activity
100 requires or is used as the basis for granting access to personally identifiable student
101 information.

102 (2) State agencies, local boards of education, and schools shall not disclose personally
103 identifiable information from education records of students without the written consent
104 of eligible students or parents to a contractor, consultant, or other party to whom a state
105 agency, local board of education, or school has outsourced institutional services or
106 functions unless that outside party:

107 (A) Performs an institutional service or function for which the state agency, local board
108 of education, or school would otherwise use its own employees;

109 (B) Is under the direct control of the state agency, local board of education, or school
110 with respect to the use and maintenance of education records;

111 (C) Limits internal access to education records to those individuals who are determined
112 to have legitimate educational interests;

113 (D) Does not use the education records for any purposes other than those explicitly
114 authorized in its contract;

115 (E) Does not disclose any personally identifiable information to any other party;

116 (F) Maintains reasonable administrative, technical, and physical safeguards to protect
117 the security, confidentiality, and integrity of personally identifiable student information
118 in its custody;

119 (G) With respect to personally identifiable information stored in a student data base
120 that is accessed over the Internet or other public network, protects such data through a
121 secure encrypted protocol. Access through a web browser shall use at a minimum
122 Hypertext Transfer Protocol Secure, while access through other means shall use the
123 industry standard encryption technologies applicable to the most sensitive component
124 of the record. With respect to records concerning a student's physical, mental, or
125 psychological health, the term 'industry standard' shall mean a technology or
126 methodology specified by the Secretary of the United States Department of Health and
127 Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5
128 as in effect on January 1, 2015;

129 (H) With respect to data that is in motion or in its custody, protects such data from
130 unauthorized disclosure using industry standard encryption technologies applicable to
131 the most sensitive component of the data in its custody. With respect to records
132 concerning a student's physical, mental, or psychological health, the term 'industry
133 standard' shall mean a technology or methodology specified by the Secretary of the

134 United States Department of Health and Human Services in guidance issued under
 135 Section 13402(H)(2) of Public Law 111-5 as in effect on January 1, 2015;
 136 (I) Has sufficient administrative and technical procedures to monitor continuously the
 137 security of personally identifiable information in its custody;
 138 (J) Conducts a security audit annually and provides the results of that audit to each
 139 state agency, local board of education, or school that provided education records;
 140 (K) Provides the state agency, local board of education, or school with a breach
 141 remediation plan acceptable to the state agency, local board of education, or school
 142 before initial receipt of education records;
 143 (L) Reports all suspected or actual security breaches to the state agency, local board
 144 of education, or school that provided education records as soon as possible but not later
 145 than 48 hours after a suspected or actual breach was known or would have been known
 146 by exercising reasonable diligence;
 147 (M) In the event of a security breach or unauthorized disclosure of personally
 148 identifiable information, pays all costs and liabilities incurred by the state agency, local
 149 board of education, or school related to the security breach or unauthorized disclosure,
 150 including but not limited to the costs of responding to inquiries about the security
 151 breach or unauthorized disclosure, of notifying subjects of personally identifiable
 152 information about the breach, of mitigating the effects of the breach for the subjects of
 153 personally identifiable information, and of investigating the cause or consequences of
 154 such security breach or unauthorized disclosure; and
 155 (N) Destroys or returns to the state agency, local board of education, or school all
 156 personally identifiable information in its custody upon request or at the termination of
 157 the contract, whichever occurs first.

158 (3) A state agency, local board of education, or school may disclose personally
 159 identifiable information from an education record of a student without the consent of
 160 eligible students or parents to a party conducting studies for or on behalf of the state
 161 agency, local board of education, or school to:
 162 (A) Develop, validate, or administer predictive tests; or
 163 (B) Administer student aid programs,
 164 provided that the outside party conducting such studies meets all of the requirements for
 165 contractors set forth in paragraph (2) of this subsection.

166 (4) Before making any nonconsent required disclosures authorized by paragraphs (2) and
 167 (3) of this subsection, the state agency, local board of education, or school shall publicly
 168 and conspicuously disclose on their web sites and through electronic notification to the
 169 chairpersons of the Senate Education and Youth Committee and the House Committee
 170 on Education the existence and character of any contracts or agreements pursuant to

171 which they intend to disclose personally identifiable information from education records
 172 to a contractor, outsourcing entity, or third party conducting a study. Such disclosure and
 173 notification shall include:

174 (A) The name and location of the data repository where any personally identifiable
 175 information would be maintained by a contractor, outsourcing entity, or third party;

176 (B) The principal purpose or purposes for which the information is intended to be used;

177 (C) The categories of individuals whose records would be disclosed to the contractor,
 178 outsourcing entity, or third party;

179 (D) The categories of records maintained by the contractor, outsourcing entity, or third
 180 party;

181 (E) Expected uses of the records disclosed to the contractor, outsourcing entity, or third
 182 party;

183 (F) The policies and practices of the contractor, outsourcing entity, or third party
 184 regarding storage, retrievability, access controls, retention, and disposal of the records;

185 (G) The title and business address of the state agency, local board of education, or
 186 school official who is responsible for the contract or agreement, and the name and
 187 business address of the contractor, outsourcing entity, or third party directly responsible
 188 for education records maintained pursuant to said contract or agreement;

189 (H) The procedures whereby eligible students or parents can be notified at their request
 190 how to gain access to any record pertaining to them or their children maintained by the
 191 contractor, outsourcing entity, or third party, and how they can contest its content; and

192 (I) The categories of sources of records in the data repository containing education
 193 records.

194 (5) State agencies, local boards of education, and schools shall not, without the written
 195 consent of eligible students or parents, facilitate, arrange, contract for, or authorize a third
 196 party to collect personally identifiable information of students, or disclose personally
 197 identifiable information from education records to any party for a commercial use,
 198 including but not limited to marketing products or services, or creation of individual,
 199 household, or group profiles; nor may such disclosure be made for the provision of
 200 services other than contracting, studies, and audits or evaluations as authorized and
 201 limited by paragraphs (2) and (3) of this subsection.

202 (6) State agencies, local boards of education, and schools shall not disclose personally
 203 identifiable information from education records to any noneducation government agency,
 204 including but not limited to the Georgia Department of Labor, and whether within or
 205 outside the state, or to any party that intends to use or disclose the information or data for
 206 the purpose of workforce development or economic planning, without the written consent
 207 of eligible students or parents.

208 (7) Except as otherwise authorized under this Code section, state agencies, local boards
 209 of education, and schools shall not disclose personally identifiable information from
 210 education records to any governmental or private entity outside this state, without the
 211 written consent of eligible students or parents, except in the following circumstances:

212 (A) To a school attended by a student who has transferred out of state;

213 (B) To an out-of-state program in which a student voluntarily participates and for
 214 which such data transfer is a condition or requirement of participation; or

215 (C) When a student is classified as a 'migrant' for federal reporting purposes.

216 (8) State agencies, local boards of education, and schools shall not disclose to the United
 217 States Department of Education any student-level information, whether or not personally
 218 identifiable, from education records unless authorized by law.

219 (9) State agencies, local boards of education, and schools shall not append education
 220 records with personally identifiable information obtained from other federal or state
 221 agencies through data matches without the written consent of eligible students or parents
 222 unless such data matches are:

223 (A) Explicitly mandated in federal or state statute; and

224 (B) Administratively required for the proper performance of their duties under the law
 225 and are relevant to and necessary for delivery of services.

226 (10) Nothing in this Code section shall limit the administrative use of education records
 227 by a person acting exclusively in the person's capacity as an employee of a state agency,
 228 local board of education, or school.

229 20-1-32.

230 (a) Each violation of any provision of Code Section 20-1-31 by a contractor, consultant,
 231 or other party that has entered into a contract or other agreement with a state agency, local
 232 board of education, or school and is subject to the provisions of this article shall be
 233 punishable by a civil penalty of up to \$5,000.00 and may result in permanent
 234 disqualification by the state agency, local board of education, or school from access to
 235 education records. Each violation involving a different individual student shall be
 236 considered a separate violation for purposes of civil penalties under this subsection.

237 (b) The Attorney General shall have the authority to enforce compliance with this article.

238 (c) Nothing contained in this article shall be construed as creating a private right of action
 239 against a state agency, local board of education, or school."

240 **SECTION 2.**

241 This Act shall become effective on July 1, 2015, and shall apply to school years beginning
242 with the 2015-2016 academic year.

243 **SECTION 3.**

244 All laws and parts of laws in conflict with this Act are repealed.