
ENGROSSED SUBSTITUTE SENATE BILL 5316

State of Washington

64th Legislature

2015 Regular Session

By Senate Early Learning & K-12 Education (originally sponsored by Senators Dammeier, Rolfes, Rivers, Hasegawa, Brown, Frockt, Dandel, Braun, Chase, Angel, and Kohl-Welles)

READ FIRST TIME 02/13/15.

1 AN ACT Relating to privacy and security of personally
2 identifiable student information; amending RCW 28A.300.500,
3 28A.300.507, 28A.320.035, and 28A.605.030; adding new sections to
4 chapter 28A.300 RCW; adding new sections to chapter 28A.310 RCW;
5 adding a new section to chapter 28A.320 RCW; and creating a new
6 section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that the use of
9 education data and new technologies hold incredible promise for
10 improving the educational experiences and outcomes of students. The
11 legislature further finds that personally identifiable student
12 information demands highly effective privacy and security safeguards.
13 The legislature intends to promote appropriate use of education data
14 by enacting safeguards to ensure that personally identifiable student
15 information is protected and individual expectations of privacy are
16 honored.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.300
18 RCW to read as follows:

19 The definitions in this section apply throughout sections 3
20 through 9 of this act unless the context clearly requires otherwise.

1 (1) "Directory information" has the meaning assigned in the
2 federal family educational rights and privacy act and corresponding
3 regulations.

4 (2)(a) "Personally identifiable student-level data" means any
5 information collected by the office of the superintendent of public
6 instruction, any state or local educational agency or institution,
7 the board of directors of a school district, or any third-party
8 service provider or contractor on behalf of the foregoing related to
9 a particular identified or identifiable student in Washington,
10 including, but not limited to:

11 (i) The student's name;

12 (ii) The name of the student's parent or other family members;

13 (iii) The address of the student or student's family;

14 (iv) A personal identifier, such as the student's social security
15 number, or student number;

16 (v) Other indirect identifiers, such as the student's date of
17 birth, place of birth, and mother's maiden name;

18 (vi) Other information that, alone or in combination, is linked
19 or linkable to a specific student that would allow a reasonable
20 person, who does not have personal knowledge of the relevant
21 circumstances, to identify the student with reasonable certainty; or

22 (vii) Information requested by a person who the educational
23 agency or institution reasonably believes knows the identity of the
24 student to whom the education record relates.

25 (b) Personally identifiable student-level data does not include
26 any anonymous and aggregated data that cannot be used to link
27 specific information to a particular student.

28 (3) "School enhancement products and services" means school-
29 related products and services that are customarily offered under the
30 direction or for the benefit of the public agency, organization, or
31 school community, such as school photography, yearbooks, graduation
32 products, and class rings.

33 (4) "Targeted advertising" means presenting advertisements to a
34 student where the advertisement is selected based on information
35 obtained or inferred from that student's online behavior, usage of
36 applications, or personally identifiable data. Targeted advertising
37 does not include advertising to a student at an online location based
38 upon that student's current visit to that location or single search
39 query without collection and retention of a student's online
40 activities over time or across different web sites or applications.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.300
2 RCW to read as follows:

3 The superintendent of public instruction, or any employee or
4 contractor of the superintendent, shall not collect, retain, or use
5 in any manner, student biometric information unless it is necessary
6 to implement an individualized education program or plan developed
7 under section 504 of the rehabilitation act of 1973. For the purposes
8 of this section, "biometric information" means a record of one or
9 more measurable biological or behavioral characteristics that can be
10 used for automated recognition of an individual. Examples include
11 fingerprints; retina and iris patterns; voiceprints; DNA sequence;
12 facial characteristics; and handwriting.

13 **Sec. 4.** RCW 28A.300.500 and 2007 c 401 s 2 are each amended to
14 read as follows:

15 (1) The office of the superintendent of public instruction is
16 authorized to establish a longitudinal student data system for and on
17 behalf of school districts in the state. The primary purpose of the
18 data system is to better aid research into programs and interventions
19 that are most effective in improving student performance, better
20 understand the state's public educator workforce, and provide
21 information on areas within the educational system that need
22 improvement.

23 (2) The confidentiality of personally identifiable student data
24 shall be safeguarded consistent with the requirements of the federal
25 family educational rights privacy act and applicable state laws.
26 Consistent with the provisions of these federal and state laws, data
27 may be disclosed for educational purposes and studies, including but
28 not limited to:

29 (a) Educational studies authorized or mandated by the state
30 legislature;

31 (b) Studies initiated by other state educational authorities and
32 authorized by the office of the superintendent of public instruction,
33 including analysis conducted by the education data center established
34 under RCW 43.41.400; and

35 (c) Studies initiated by other public or private agencies and
36 organizations and authorized by the office of the superintendent of
37 public instruction.

38 (3) The office of the superintendent of public instruction shall
39 grant parents and legal guardians access to any student record that

1 is a record of a child of the parent or a child in the care of the
2 legal guardian, including records that contain personally
3 identifiable data, unless the student is age eighteen or older.

4 (4) Any public agency or organization or any private contractor
5 or vendor, that is authorized by the office of the superintendent of
6 public instruction to access student-level data shall adhere to all
7 federal and state laws protecting student data and safeguarding the
8 confidentiality and privacy of student records. All public agencies
9 or organizations and private contractors or vendors, that receive
10 personally identifiable student-level data from the office of the
11 superintendent of public instruction and to the extent they are
12 providing services to the office of the superintendent of public
13 instruction shall ensure the following:

14 (a) All personally identifiable student-level data is used solely
15 for the purpose for which the disclosure was intended;

16 (b) No personally identifiable student-level data is sold or used
17 for secondary purposes such as marketing or targeted advertising;

18 (c) All personally identifiable student-level data, including
19 backup copies, is destroyed when it is no longer required for the
20 purposes for which it was disclosed, or upon agreement or contract
21 termination, or project completion;

22 (d) A record is kept of any requests for access to the personally
23 identifiable student-level data;

24 (e) No personally identifiable student-level data is disclosed to
25 any other individual or entity without the prior written consent of
26 the parent, legal guardian, or student if the student is age eighteen
27 or older unless the entity is an educational agency or institution
28 that abides by the data security requirements of this section and the
29 federal family educational rights and privacy act and corresponding
30 regulations;

31 (f) The provisions of this subsection (4) shall not apply to use
32 or disclosure of personally identifiable student-level data by a
33 private contractor or vendor to a service provider, provided the
34 private contractor or vendor:

35 (i) Prohibits the service provider from using any personally
36 identifiable student-level data for any purpose other than providing
37 the contracted service to, or on behalf of, the private contractor or
38 vendor for the educational purposes for which such data was
39 originally disclosed to the private contractor or vendor;

1 (ii) Prohibits the service provider from disclosing any
2 personally identifiable student-level data provided by the private
3 contractor or vendor to subsequent third parties unless the
4 disclosure is otherwise permitted by this section; and

5 (iii) Requires the service provider to comply with the
6 requirements of this section.

7 (5) Any public agency or organization that possesses personally
8 identifiable student-level data shall take special precautions to
9 avoid accidental disclosure of the data, including encryption
10 whenever feasible. Private contractors or vendors shall employ
11 industry standard methods to ensure security of all personally
12 identifiable student-level data that they receive, store, use, and
13 transmit.

14 ~~((+4))~~ (6) Nothing in this section precludes the office of the
15 superintendent of public instruction from collecting and distributing
16 aggregate data about students or student-level data without
17 personally identifiable information.

18 (7) Nothing in this section precludes the office of the
19 superintendent of public instruction from releasing directory
20 information for the purpose of making available to parents and
21 students school enhancement products and services as authorized by
22 the office of the superintendent of public instruction, as long as
23 any outside party receiving directory information for these purposes
24 is prohibited from secondary use or sale of the information and is
25 required to comply with all other provisions of this section.

26 (8) Nothing in this section prohibits the use of personally
27 identifiable student-level data for adaptive learning, personalized
28 learning, or customized education.

29 (9) Nothing in this section may be construed to impede the
30 ability of students to download, export, or otherwise save or
31 maintain their own student data or documents.

32 **Sec. 5.** RCW 28A.300.507 and 2009 c 548 s 203 are each amended to
33 read as follows:

34 (1) A K-12 data governance group shall be established within the
35 office of the superintendent of public instruction to assist in the
36 design and implementation of a K-12 education data improvement system
37 for financial, student, and educator data. It is the intent that the
38 data system reporting specifically serve requirements for teachers,
39 parents, superintendents, school boards, the office of the

1 superintendent of public instruction, the legislature, and the
2 public.

3 (2) The K-12 data governance group shall include representatives
4 of the education data center, the office of the superintendent of
5 public instruction, the legislative evaluation and accountability
6 program committee, the professional educator standards board, the
7 state board of education, and school district staff, including
8 information technology staff. Additional entities with expertise in
9 education data may be included in the K-12 data governance group.

10 (3) The K-12 data governance group shall:

11 (a) Develop a detailed data security plan and procedures to
12 govern the use and maintenance of data systems, including ensuring
13 the use of appropriate administrative, physical, and technical
14 safeguards for electronic and physical personally identifiable
15 student-level data at the state level; and develop a model plan
16 consistent with this chapter for school districts to use to safeguard
17 personally identifiable student-level data at the school district
18 level;

19 (b) Identify the critical research and policy questions that need
20 to be addressed by the K-12 education data improvement system;

21 ~~((b))~~ (c) Identify reports and other information that should be
22 made available on the internet in addition to the reports identified
23 in subsection (5) of this section;

24 ~~((e))~~ (d) Create a comprehensive needs requirement document
25 detailing the specific information and technical capacity needed by
26 school districts and the state to meet the legislature's expectations
27 for a comprehensive K-12 education data improvement system as
28 described under RCW 28A.655.210;

29 ~~((d))~~ (e) Conduct a gap analysis of current and planned
30 information compared to the needs requirement document, including an
31 analysis of the strengths and limitations of an education data system
32 and programs currently used by school districts and the state, and
33 specifically the gap analysis must look at the extent to which the
34 existing data can be transformed into canonical form and where
35 existing software can be used to meet the needs requirement document;

36 ~~((e))~~ (f) Focus on financial and cost data necessary to support
37 the new K-12 financial models and funding formulas, including any
38 necessary changes to school district budgeting and accounting, and on
39 assuring the capacity to link data across financial, student, and
40 educator systems; and

1 (~~(f)~~) (g) Define the operating rules and governance structure
2 for K-12 data collections, ensuring that data systems are flexible
3 and able to adapt to evolving needs for information, within an
4 objective and orderly data governance process for determining when
5 changes are needed and how to implement them. Strong consideration
6 must be made to the current practice and cost of migration to new
7 requirements. The operating rules should delineate the coordination,
8 delegation, and escalation authority for data collection issues,
9 business rules, and performance goals for each K-12 data collection
10 system, including:

11 (i) Defining and maintaining standards for privacy and
12 confidentiality;

13 (ii) Setting data collection priorities;

14 (iii) Defining and updating a standard data dictionary;

15 (iv) Ensuring data compliance with the data dictionary;

16 (v) Ensuring data accuracy; and

17 (vi) Establishing minimum standards for school, student,
18 financial, and teacher data systems. Data elements may be specified
19 "to the extent feasible" or "to the extent available" to collect more
20 and better data sets from districts with more flexible software.
21 Nothing in RCW 43.41.400, this section, or RCW 28A.655.210 should be
22 construed to require that a data dictionary or reporting should be
23 hobbled to the lowest common set. The work of the K-12 data
24 governance group must specify which data are desirable. Districts
25 that can meet these requirements shall report the desirable data.
26 Funding from the legislature must establish which subset data are
27 absolutely required.

28 (4)(a) The K-12 data governance group shall provide updates on
29 its work as requested by the education data center and the
30 legislative evaluation and accountability program committee.

31 (b) The work of the K-12 data governance group shall be
32 periodically reviewed and monitored by the educational data center
33 and the legislative evaluation and accountability program committee.

34 (5) To the extent data is available, the office of the
35 superintendent of public instruction shall make the following minimum
36 reports available on the internet. The reports must either be run on
37 demand against current data, or, if a static report, must have been
38 run against the most recent data:

39 (a) The percentage of data compliance and data accuracy by school
40 district;

1 (b) The magnitude of spending per student, by student estimated
2 by the following algorithm and reported as the detailed summation of
3 the following components:

4 (i) An approximate, prorated fraction of each teacher or human
5 resource element that directly serves the student. Each human
6 resource element must be listed or accessible through online
7 tunneling in the report;

8 (ii) An approximate, prorated fraction of classroom or building
9 costs used by the student;

10 (iii) An approximate, prorated fraction of transportation costs
11 used by the student; and

12 (iv) An approximate, prorated fraction of all other resources
13 within the district. District-wide components should be disaggregated
14 to the extent that it is sensible and economical;

15 (c) The cost of K-12 basic education, per student, by student, by
16 school district, estimated by the algorithm in (b) of this
17 subsection, and reported in the same manner as required in (b) of
18 this subsection;

19 (d) The cost of K-12 special education services per student, by
20 student receiving those services, by school district, estimated by
21 the algorithm in (b) of this subsection, and reported in the same
22 manner as required in (b) of this subsection;

23 (e) Improvement on the statewide assessments computed as both a
24 percentage change and absolute change on a scale score metric by
25 district, by school, and by teacher that can also be filtered by a
26 student's length of full-time enrollment within the school district;

27 (f) Number of K-12 students per classroom teacher on a per
28 teacher basis;

29 (g) Number of K-12 classroom teachers per student on a per
30 student basis;

31 (h) Percentage of a classroom teacher per student on a per
32 student basis; and

33 (i) The cost of K-12 education per student by school district
34 sorted by federal, state, and local dollars.

35 (6) The superintendent of public instruction shall submit a
36 preliminary report to the legislature by November 15, 2009, including
37 the analyses by the K-12 data governance group under subsection (3)
38 of this section and preliminary options for addressing identified
39 gaps. A final report, including a proposed phase-in plan and
40 preliminary cost estimates for implementation of a comprehensive data

1 improvement system for financial, student, and educator data shall be
2 submitted to the legislature by September 1, 2010.

3 (7) All reports and data referenced in this section and RCW
4 43.41.400 and 28A.655.210 shall be made available in a manner
5 consistent with the technical requirements of the legislative
6 evaluation and accountability program committee and the education
7 data center so that selected data can be provided to the legislature,
8 governor, school districts, and the public.

9 (8) Reports shall contain data to the extent it is available. All
10 reports must include documentation of which data are not available or
11 are estimated. Reports must not be suppressed because of poor data
12 accuracy or completeness. Reports may be accompanied with
13 documentation to inform the reader of why some data are missing or
14 inaccurate or estimated.

15 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.310
16 RCW to read as follows:

17 (1) Any public agency or organization or any private contractor
18 or vendor, that is authorized by the educational service district
19 board to access student-level data must adhere to all federal and
20 state laws protecting student data and safeguarding the
21 confidentiality and privacy of student records. All public agencies
22 or organizations and private contractors or vendors, that receive
23 personally identifiable student-level data from the educational
24 service district and to the extent they are providing services to the
25 educational service district shall ensure the following:

26 (a) All personally identifiable student-level data is used solely
27 for the purpose for which the disclosure was intended;

28 (b) No personally identifiable student-level data is sold or used
29 for secondary purposes such as marketing or targeted advertising
30 purposes;

31 (c) All personally identifiable student-level data, including
32 backup copies, is destroyed when it is no longer required for the
33 purposes for which it was disclosed, or upon agreement or contract
34 termination, or project completion;

35 (d) A record is kept of any requests for access to the personally
36 identifiable student-level data;

37 (e) No personally identifiable student-level data is disclosed to
38 any other individual or entity without the prior written consent of
39 the parent, legal guardian, or student if the student is age eighteen

1 or older unless the entity is an educational agency or institution
2 that abides by the data security requirements of this section and the
3 federal family educational rights and privacy act and corresponding
4 regulations;

5 (f) The provisions of this subsection (1) shall not apply to use
6 or disclosure of personally identifiable student-level data by a
7 private contractor or vendor to a service provider, provided the
8 private contractor or vendor:

9 (i) Prohibits the service provider from using any personally
10 identifiable student-level data for any purpose other than providing
11 the contracted service to, or on behalf of, the private contractor or
12 vendor for the educational purposes for which such data was
13 originally disclosed to the private contractor or vendor;

14 (ii) Prohibits the service provider from disclosing any
15 personally identifiable student-level data provided by the private
16 contractor or vendor to subsequent third parties unless the
17 disclosure is otherwise permitted by this section; and

18 (iii) Requires the service provider to comply with the
19 requirements of this section.

20 (2) Any public agency or organization that possesses personally
21 identifiable student-level data shall take special precautions to
22 avoid accidental disclosure of the data, including encryption
23 whenever feasible. Private contractors or vendors shall employ
24 industry standard methods to ensure security of all personally
25 identifiable student-level data that they receive, store, use, and
26 transmit.

27 (3) Nothing in this section precludes the educational service
28 district from collecting and distributing aggregate data about
29 students or student-level data without personally identifiable
30 information.

31 (4) Nothing in this section precludes the educational service
32 district from releasing directory information for the purpose of
33 making available to parents and students school enhancement products
34 and services as authorized by the educational service district, as
35 long as any outside party receiving directory information for these
36 purposes is prohibited from secondary use or sale of the information
37 and is required to comply with all other provisions of this section.

38 (5) Nothing in this section prohibits the use of personally
39 identifiable student-level data for adaptive learning, personalized
40 learning, or customized education.

1 (6) Nothing in this section may be construed to impede the
2 ability of students to download, export, or otherwise save or
3 maintain their own student data or documents.

4 (7) The definitions in section 2 of this act apply in this
5 section.

6 NEW SECTION. **Sec. 7.** A new section is added to chapter 28A.310
7 RCW to read as follows:

8 No educational service district board, educational service
9 district, employee, or contractor may collect, retain, or use in any
10 manner, student biometric information unless it is necessary to
11 implement an individualized education program or plan developed under
12 section 504 of the rehabilitation act of 1973. For the purposes of
13 this section, "biometric information" means a record of one or more
14 measurable biological or behavioral characteristics that can be used
15 for automated recognition of an individual. Examples include
16 fingerprints; retina and iris patterns; voiceprints; DNA sequence;
17 facial characteristics; and handwriting.

18 **Sec. 8.** RCW 28A.320.035 and 1997 c 267 s 1 are each amended to
19 read as follows:

20 (1)(a) The board of directors of a school district may contract
21 with other school districts, educational service districts, public or
22 private organizations, agencies, schools, or individuals to implement
23 the board's powers and duties. The board of directors of a school
24 district may contract for goods and services, including but not
25 limited to contracts for goods and services as specifically
26 authorized in statute or rule, as well as other educational,
27 instructional, and specialized services. When a school district board
28 of directors contracts for educational, instructional, or specialized
29 services, the purpose of the contract must be to improve student
30 learning or achievement.

31 ((+2)) (b) A contract under ((subsection (1) of)) this section
32 may not be made with a religious or sectarian organization or school
33 where the contract would violate the state or federal Constitution.

34 (c) Any public agency or organization or any private contractor
35 or vendor, that is authorized by the school district board of
36 directors or any school in the district to access student-level data
37 must adhere to all federal and state laws protecting student data and
38 safeguarding the confidentiality and privacy of student records. All

1 public agencies or organizations and private contractors or vendors,
2 that receive personally identifiable student-level data from the
3 school district board of directors or any school in the district and
4 to the extent they are providing services to the school district
5 board of directors or any school in the district shall ensure the
6 following:

7 (i) All personally identifiable student-level data is used solely
8 for the purpose for which the disclosure was intended;

9 (ii) No personally identifiable student-level data is sold or
10 used for secondary purposes such as marketing or targeted
11 advertising;

12 (iii) All personally identifiable student-level data, including
13 backup copies, is destroyed when it is no longer required for the
14 purposes for which it was disclosed, or upon agreement or contract
15 termination, or project completion;

16 (iv) A record is kept of any requests for access to the
17 personally identifiable student-level data;

18 (v) No personally identifiable student-level data is disclosed to
19 any other individual or entity without the prior written consent of
20 the parent, legal guardian, or student if the student is age eighteen
21 or older unless the entity is an educational agency or institution
22 that abides by the data security requirements of this section and the
23 federal family educational rights and privacy act and corresponding
24 regulations;

25 (vi) The provisions of this subsection (1) shall not apply to use
26 or disclosure of personally identifiable student-level data by a
27 private contractor or vendor to a service provider, provided the
28 private contractor or vendor:

29 (A) Prohibits the service provider from using any personally
30 identifiable student-level data for any purpose other than providing
31 the contracted service to, or on behalf of, the private contractor or
32 vendor for the educational purposes for which such data was
33 originally disclosed to the private contractor or vendor;

34 (B) Prohibits the service provider from disclosing any personally
35 identifiable student-level data provided by the private contractor or
36 vendor to subsequent third parties unless the disclosure is otherwise
37 permitted by this section; and

38 (C) Requires the service provider to comply with the requirements
39 of this section.

1 (d) Any public agency or organization that possesses personally
2 identifiable student-level data shall take special precautions to
3 avoid accidental disclosure of the data, including encryption
4 whenever feasible. Private contractors or vendors shall employ
5 industry standard methods to ensure security of all personally
6 identifiable student-level data that they receive, store, use, and
7 transmit.

8 (2) Nothing in this section precludes the school district from
9 collecting and distributing aggregate data about students or student-
10 level data without personally identifiable information.

11 (3) Nothing in this section precludes the school district board
12 of directors or any school in the district from releasing directory
13 information for the purpose of making available to parents and
14 students school enhancement products and services as authorized by
15 the school district board of directors or any school in the district,
16 as long as any outside party receiving directory information for
17 these purposes is prohibited from secondary use or sale of the
18 information and is required to comply with all other provisions of
19 this section.

20 (4) Nothing in this section prohibits the use of personally
21 identifiable student-level data for adaptive learning, personalized
22 learning, or customized education.

23 (5) Nothing in this section may be construed to impede the
24 ability of students to download, export, or otherwise save or
25 maintain their own student data or documents.

26 (6) The definitions in section 2 of this act apply in this
27 section.

28 NEW SECTION. Sec. 9. A new section is added to chapter 28A.320
29 RCW to read as follows:

30 No school district board of directors, school, employee, or
31 contractor may collect, retain, or use in any manner, student
32 biometric information unless it is necessary to implement an
33 individualized education program or plan developed under section 504
34 of the rehabilitation act of 1973. For the purposes of this section,
35 "biometric information" means a record of one or more measurable
36 biological or behavioral characteristics that can be used for
37 automated recognition of an individual. Examples include
38 fingerprints; retina and iris patterns; voiceprints; DNA sequence;
39 facial characteristics; and handwriting.

1 **Sec. 10.** RCW 28A.605.030 and 1997 c 119 s 1 are each amended to
2 read as follows:

3 (1) The parent or guardian of a student who is or has been in
4 attendance at a school has the right to review all education records
5 of the student. A school may not release the education records of a
6 student without the written consent of the student's parent or
7 guardian, except as authorized by RCW 28A.600.475 and the family
8 educational and privacy rights act of 1974, 20 U.S.C. Sec. 1232g.

9 (2) The board of directors of each school district shall
10 establish a procedure for:

11 ~~((1))~~ (a) Granting the request by a parent or guardian for
12 access to the education records of his or her child that provides
13 that:

14 (i) Records shall be provided electronically, if practicable;
15 (ii) No fee may be charged for the inspection of records; and
16 (iii) If the records are provided in a nonelectronic format, then
17 the school district may impose a reasonable charge to cover the
18 actual costs directly incident to the copying; and

19 ~~((2))~~ (b) Prohibiting the release of student information
20 without the written consent of the student's parent or guardian,
21 after the parent or guardian has been informed what information is
22 being requested, who is requesting the information and why, and what
23 will be done with the information.

24 (3) The procedure adopted by the school district must be in
25 compliance with the family educational and privacy rights act of
26 1974, 20 U.S.C. Sec. 1232g.

--- END ---