
Education Committee

HB 2133

Brief Description: Maintaining privacy of student educational records.

Sponsors: Representatives Scott, Overstreet, Pollet, Shea, Taylor, Haler, Buys, Warnick, Sells, Manweller, Fagan, Condotta and Freeman.

Brief Summary of Bill

- Requires the Joint Legislative Audit & Review Committee (JLARC) to determine the extent the 2011 amendments to federal regulations under the Federal Educational Rights and Privacy Act (FERPA) permit sharing of personally identifiable student data or student-level data under documents and agreements related to collection, sharing, storage, security, dissemination, and access to personally identifiable student data or student-level data.
- Requires the JLARC to submit its analysis and findings to the Legislature by September 1, 2014, to allow an opportunity for the Legislature to scrutinize the results and, if necessary, direct the withdrawal of Washington from any multi-state assessment consortium that disseminates personally identifiable student data or student-level data without written consent.
- Requires the JLARC to review annually the relevant documents and agreements to determine any changes its findings, and if so, immediately report to the Legislature, if Washington remains a member of a multi-state assessment consortium.

Hearing Date: 1/15/14

Staff: Megan Wargacki (786-7194).

Background:

Family Educational Rights and Privacy Act.

The federal Family Educational Rights and Privacy Act (FERPA) prohibits educational agencies and institutions that receive federal funds from releasing personally identifiable information (PII) contained in student education records without the prior, written consent of a parent or eligible

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

student. In 2011, the United States Department of Education (DoE) amended its administrative regulations under the FERPA. There are currently sixteen exceptions to this rule. One exception allows for disclosure of the PII to organizations conducting studies for, or on behalf of, schools, school districts, or postsecondary institutions. Studies can be conducted for the purpose of developing or administering predictive tests, or improving instruction. Studies must be conducted in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization.

Another exception allows for disclosure of the PII to authorized representatives of, among others, state or local education authorities. Under this exception, the PII can be used to audit or evaluate a federal- or state-supported education program, or to enforce or comply with federal legal requirements relating to these programs. The entity disclosing the PII is specifically required to limit use of the PII to authorized representatives of the entity.

Both exceptions specifically require the parties to execute a written agreement when disclosing PII from education records without consent. Under both exceptions, the PII must be destroyed when no longer needed for the original purpose of its disclosure.

Common Core State Standards and Assessments.

In 2011 the Superintendent of Public Instruction (SPI) adopted the Common Core State Standards (CCSS) as state learning standards for English Language Arts (ELA) and mathematics. Washington is participating in a multi-state consortium, called the Smarter Balanced Assessment Consortium (SBAC), to develop assessments for the CCSS. Legislation passed in 2013 directed the SPI to replace state assessments in reading, writing, and mathematics with assessments developed by a multistate consortium beginning in the 2014-2015 school year.

Longitudinal Student Data System.

In 2007, the Legislature authorized the Office of Superintendent of Public Instruction (OSPI) to establish a longitudinal student data system to aid research into programs that are most effective in improving student performance, better understand the state's public educator workforce, and provide information on areas within the education system that need improvement. Federal and state privacy laws apply to PII in the data system.

Education Data Center.

The Education Data Center in the Office of Financial Management (OFM) develops data sharing agreements with state education agencies and institutions to access student data for research purposes. The Education Data Center is required to make its analysis available to the education agencies and institutions that contribute data, but only to the extent allowed by federal and state security and confidentiality requirements.

Summary of Bill:

The Joint Legislative Audit & Review Committee (JLARC) must conduct a detailed analysis of documents and agreements by the OSPI, the OFM, and school districts related to collection, sharing, storage, security, dissemination, and access to personally identifiable student data or student-level data to determine the extent and circumstances the agreements require or permit dissemination of personally identifiable student data or student-level data from Washington state students without written consent of students or their parents or guardians. Documents to analyze

include the cooperative agreement between the DoE and the SBAC, and the SBAC and the state of Washington; the longitudinal student data system; and the activities of the education data center.

The JLARC must analyze the 2011 amendments to FERPA to determine the extent the regulations permit sharing of personally identifiable student data or student-level data under the documents analyzed.

The JLARC must submit its analysis and findings to the Legislature by September 1, 2014, to allow an opportunity for the Legislature to scrutinize the results and, if necessary, direct the withdrawal of Washington state from any multi-state assessment consortium that disseminates personally identifiable student data or student-level data without written consent.

If Washington remains a member of the SBAC after the 2015 Legislative session or becomes a member of any other multi-state assessment consortium after the bill takes effect, the JLARC must review relevant documents and agreements annually to determine whether its previous findings must be revised, and if so, the JLARC must immediately forward the revised analysis and findings to the Education Committees of the Legislature.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.