
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, Dangel, Braun, Chase, Angel, and Kohl-Welles)

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 a new section 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 8 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) "Personally identifiable student-level data" means any
5 information relating to a particular identified or identifiable
6 individual including, but not limited to, any deidentified data that
7 relates to a particular identified or identifiable individual, but
8 not including any anonymous and aggregated data that cannot be used
9 to link specific information to a particular student.

10 (3) "School enhancement products and services" means school-
11 related products and services that are customarily offered under the
12 direction or for the benefit of the public agency, organization, or
13 school community, such as school photography, yearbooks, graduation
14 products, and class rings.

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

17 The superintendent of public instruction, or any employee or
18 contractor of the superintendent, shall not collect, retain, or use
19 in any manner, student biometric information. For the purposes of
20 this section, "biometric information" includes, but is not limited
21 to, a fingerprint or hand scan, a retina or iris scan, a voice print,
22 or a facial geometry scan of a student.

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

25 (1) The office of the superintendent of public instruction is
26 authorized to establish a longitudinal student data system for and on
27 behalf of school districts in the state. The primary purpose of the
28 data system is to better aid research into programs and interventions
29 that are most effective in improving student performance, better
30 understand the state's public educator workforce, and provide
31 information on areas within the educational system that need
32 improvement.

33 (2) The confidentiality of personally identifiable student data
34 shall be safeguarded consistent with the requirements of the federal
35 family educational rights privacy act and applicable state laws.
36 Consistent with the provisions of these federal and state laws, data
37 may be disclosed for educational purposes and studies, including but
38 not limited to:

1 (a) Educational studies authorized or mandated by the state
2 legislature;

3 (b) Studies initiated by other state educational authorities and
4 authorized by the office of the superintendent of public instruction,
5 including analysis conducted by the education data center established
6 under RCW 43.41.400; and

7 (c) Studies initiated by other public or private agencies and
8 organizations and authorized by the office of the superintendent of
9 public instruction.

10 (3) The office of the superintendent of public instruction shall
11 grant parents and legal guardians access to any student record that
12 is a record of a child of the parent or a child in the care of the
13 legal guardian, including records that contain personally
14 identifiable data, unless the student is age eighteen or older.
15 Personally identifiable student-level data must not be disclosed to
16 any other third party unless the disclosure is necessary to meet (a)
17 a legitimate need for the data to support the particular student's
18 education or (b) the needs of an educational study or educational
19 purpose specifically authorized by a public agency. Nothing in this
20 subsection (3) limits disclosure of information allowed under the
21 federal family educational rights and privacy act.

22 (4) Any public agency or organization or any private contractor
23 or vendor, that is authorized by the office of the superintendent of
24 public instruction to access student-level data shall adhere to all
25 federal and state laws protecting student data and safeguarding the
26 confidentiality and privacy of student records. All public agencies
27 or organizations and private contractors or vendors, that receive
28 personally identifiable student-level data shall ensure the
29 following:

30 (a) All personally identifiable student data must be used solely
31 for the purpose for which the disclosure was specifically intended;

32 (b) No personally identifiable student-level data may be used for
33 marketing, commercial, or advertising purposes;

34 (c) All personally identifiable student-level data, including
35 backup copies, must be destroyed when the data is no longer needed,
36 or upon agreement or contract termination, or project completion;

37 (d) Parents and legal guardians must be granted access to any
38 student record that is a record of a child of the parent or a child
39 in the care of the legal guardian;

1 (e) A record must be kept of any requests for access to the
2 personally identifiable student-level data;

3 (f)(i) No personally identifiable student-level data may be
4 disclosed to any other individual or entity without the prior written
5 consent of the parent, legal guardian, or student if the student is
6 over the age of eighteen unless the entity is a designated education
7 agency that abides by the data security requirements of this section.

8 (ii) Notwithstanding (f)(i) of this subsection, the office of the
9 superintendent of public instruction may release directory
10 information for the purpose of making available to parents and
11 students school enhancement products and services as authorized by
12 the office of the superintendent of public instruction, as long as
13 any outside party receiving directory information for these purposes
14 is prohibited from secondary use or sale of the information and is
15 required to comply with all other provisions of this section.

16 (5) Any public agency or organization that possesses personally
17 identifiable student-level data shall take special precautions to
18 avoid accidental disclosure of the data, including encryption
19 whenever feasible. Private contractors or vendors shall employ
20 industry standard methods of encryption, in transit and at rest, for
21 all personally identifiable student-level data that they receive,
22 store, use, and transmit.

23 ((+4)) (5) Nothing in this section precludes the office of the
24 superintendent of public instruction from collecting and distributing
25 aggregate data about students or student-level data without
26 personally identifiable information.

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

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

37 (2) The K-12 data governance group shall include representatives
38 of the education data center, the office of the superintendent of
39 public instruction, the legislative evaluation and accountability

1 program committee, the professional educator standards board, the
2 state board of education, and school district staff, including
3 information technology staff. Additional entities with expertise in
4 education data may be included in the K-12 data governance group.

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

6 (a) Develop a detailed data security plan and procedures to
7 govern the use and maintenance of data systems, including ensuring
8 the use of appropriate administrative, physical, and technical
9 safeguards for electronic and physical personally identifiable
10 student-level data at the state level; and develop a model plan for
11 school districts to use to safeguard personally identifiable student-
12 level data at the school district level;

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

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

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

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

30 ~~((e))~~ (f) Focus on financial and cost data necessary to support
31 the new K-12 financial models and funding formulas, including any
32 necessary changes to school district budgeting and accounting, and on
33 assuring the capacity to link data across financial, student, and
34 educator systems; and

35 ~~((f))~~ (g) Define the operating rules and governance structure
36 for K-12 data collections, ensuring that data systems are flexible
37 and able to adapt to evolving needs for information, within an
38 objective and orderly data governance process for determining when
39 changes are needed and how to implement them. Strong consideration
40 must be made to the current practice and cost of migration to new

1 requirements. The operating rules should delineate the coordination,
2 delegation, and escalation authority for data collection issues,
3 business rules, and performance goals for each K-12 data collection
4 system, including:

5 (i) Defining and maintaining standards for privacy and
6 confidentiality;

7 (ii) Setting data collection priorities;

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

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

10 (v) Ensuring data accuracy; and

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

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

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

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

33 (a) The percentage of data compliance and data accuracy by school
34 district;

35 (b) The magnitude of spending per student, by student estimated
36 by the following algorithm and reported as the detailed summation of
37 the following components:

38 (i) An approximate, prorated fraction of each teacher or human
39 resource element that directly serves the student. Each human

1 resource element must be listed or accessible through online
2 tunneling in the report;

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

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

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

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

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

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

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

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

26 (h) Percentage of a classroom teacher per student on a per
27 student basis; and

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

30 (6) The superintendent of public instruction shall submit a
31 preliminary report to the legislature by November 15, 2009, including
32 the analyses by the K-12 data governance group under subsection (3)
33 of this section and preliminary options for addressing identified
34 gaps. A final report, including a proposed phase-in plan and
35 preliminary cost estimates for implementation of a comprehensive data
36 improvement system for financial, student, and educator data shall be
37 submitted to the legislature by September 1, 2010.

38 (7) All reports and data referenced in this section and RCW
39 43.41.400 and 28A.655.210 shall be made available in a manner
40 consistent with the technical requirements of the legislative

1 evaluation and accountability program committee and the education
2 data center so that selected data can be provided to the legislature,
3 governor, school districts, and the public.

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

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

12 No educational service district board of directors, employee, or
13 contractor may collect, retain, or use in any manner, student
14 biometric information. For the purposes of this section, "biometric
15 information" includes, but is not limited to, a fingerprint or hand
16 scan, a retina or iris scan, a voice print, or a facial geometry scan
17 of a student.

18 **Sec. 7.** 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) Personally identifiable student-level data may be disclosed
35 to a third party only if the disclosure is necessary to meet (i) a
36 legitimate need for the data to support the particular student's
37 education or (ii) the needs of an educational study or educational
38 purpose specifically authorized by a public agency. Nothing in this

1 subsection (1)(c) limits disclosure of information allowed under the
2 federal family educational rights and privacy act.

3 (d) Any public agency or organization or any private contractor
4 or vendor, that is authorized by the school district board of
5 directors to access student-level data must adhere to all federal and
6 state laws protecting student data and safeguarding the
7 confidentiality and privacy of student records. All public agencies
8 or organizations and private contractors or vendors, that receive
9 personally identifiable student-level data shall ensure the
10 following:

11 (i) All personally identifiable student-level data shall be used
12 solely for the purpose for which the disclosure was specifically
13 intended;

14 (ii) No personally identifiable student-level data may be sold or
15 used for marketing, commercial, or advertising purposes;

16 (iii) All personally identifiable student-level data, including
17 backup copies, must be destroyed when the data is no longer needed,
18 or upon agreement or contract termination, or project completion;

19 (iv) Parents and legal guardians must be granted access to any
20 student record that is a record of a child of the parent or a child
21 in the care of the legal guardian;

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

24 (vi)(A) No personally identifiable student-level data shall be
25 disclosed to any other individual or entity without the prior written
26 consent of the parent, legal guardian, or student if the student is
27 over the age of eighteen unless the entity is a designated education
28 agency that abides by the data security requirements of this section.

29 (B) Notwithstanding (d)(iv)(A) of this subsection, the school
30 district board of directors may release directory information for the
31 purpose of making available to parents and students school
32 enhancement products and services as authorized by the school
33 district board of directors, as long as any outside party receiving
34 directory information for these purposes is prohibited from secondary
35 use or sale of the information and is required to comply with all
36 other provisions of this section.

37 (e) Any public agency or organization that possesses personally
38 identifiable student-level data shall take special precautions to
39 avoid accidental disclosure of the data, including encryption
40 whenever feasible. Private contractors or vendors shall employ

1 industry standard methods of encryption, in transit and at rest, for
2 all personally identifiable student-level data that they receive,
3 store, use, and transmit.

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

7 NEW SECTION. Sec. 8. A new section is added to chapter 28A.320
8 RCW to read as follows:

9 No school district board of directors, employee, or contractor
10 may collect, retain, or use in any manner, student biometric
11 information. For the purposes of this section, "biometric
12 information" includes, but is not limited to, a fingerprint or hand
13 scan, a retina or iris scan, a voice print, or a facial geometry scan
14 of a student.

15 **Sec. 9.** RCW 28A.605.030 and 1997 c 119 s 1 are each amended to
16 read as follows:

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

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

25 ~~((+1))~~ (a) Granting the request by a parent or guardian for
26 access to the education records of his or her child that provides
27 that:

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

33 ~~((+2))~~ (b) Prohibiting the release of student information
34 without the written consent of the student's parent or guardian,
35 after the parent or guardian has been informed what information is
36 being requested, who is requesting the information and why, and what
37 will be done with the information.

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

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