

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 252

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO EDUCATIONAL DATA SYSTEM SECURITY; AMENDING SECTION 33-120,
2 IDAHO CODE, TO AUTHORIZE THE STATE BOARD OF EDUCATION TO ADOPT RULES
3 RELATING TO THE EDUCATIONAL DATA SYSTEM; AND AMENDING SECTION 33-133,
4 IDAHO CODE, TO REVISE A DEFINITION, TO CLARIFY THE CONDITIONS UNDER
5 WHICH STUDENT DATA IS PERSONALLY IDENTIFIABLE, TO SPECIFY THE STORAGE
6 OF STUDENT DATA, TO PROVIDE THAT THE STATE BOARD OF EDUCATION AND THE
7 DEPARTMENT OF EDUCATION SHALL ENSURE THE SECURITY OF THE EDUCATIONAL
8 DATA SYSTEM AND TO MAKE TECHNICAL CORRECTIONS.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 33-120, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 33-120. UNIFORM REPORTING. (1) The state superintendent of public in-
14 struction shall prescribe forms and format for uniform accounting for finan-
15 cial and statistical reports and performance measurements to provide con-
16 sistent and uniform reporting by school districts.

17 (2) The state board of education may adopt rules pursuant to the pro-
18 visions of chapter 52, title 67, Idaho Code, and under authority of section
19 33-105, Idaho Code, to provide for and implement a student information man-
20 agement system and an educational data system, as defined in section 33-133,
21 Idaho Code. All longitudinal educational data will be housed and maintained
22 in the educational data system.

23 SECTION 2. That Section 33-133, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 33-133. DEFINITIONS -- STUDENT DATA -- USE AND LIMITATIONS -- PENAL-
26 TIES. (1) As used in this act, the following terms shall have the following
27 meanings:

28 (a) "Agency" means each state board, commission, department, office or
29 institution, educational or otherwise, of the state of Idaho. State
30 agency shall also mean any city, county, district or other political
31 subdivision of the state.

32 (b) "Aggregate data" means data collected and/or reported at the group,
33 cohort or institutional level. Aggregate data shall not include per-
34 sonally identifiable information. The minimum number of students shall
35 be determined by the state board of education.

36 (c) "Board" means the state board of education.

37 (d) ~~"Data system" means the state's elementary, secondary and postsec-~~
38 ~~ondary longitudinal data systems.~~

39 (e) "Department" means the state department of education.

1 (fe) "District" or "school district" means an Idaho public school dis-
2 trict and shall also include Idaho public charter schools.

3 (f) "Educational data system" means the state's elementary, secondary
4 and postsecondary longitudinal data systems.

5 (g) "Parent" means parent, parents, legal guardian or legal guardians.

6 (h) "Personally identifiable data," "personally identifiable student
7 data" or "personally identifiable information" includes, but is not
8 limited to: the student's name; the name of the student's parent or
9 other family members; the address of the student or student's family;
10 a personal identifier, such as the student's social security number,
11 student education unique identification number or biometric record;
12 other indirect identifiers, such as the student's date of birth, place
13 of birth and mother's maiden name; and other information that, alone or
14 in combination, ~~is~~ may be linked or linkable to a specific student that
15 would allow a reasonable person in the school community, who does not
16 have personal knowledge of the relevant circumstances, to identify the
17 student with reasonable certainty, or information requested by a person
18 who the educational agency or institution reasonably believes knows the
19 identity of the student to whom the education record relates. Student
20 data, when reported in the aggregate that cannot be tied back to an in-
21 dividual student, is not personally identifiable data or personally
22 identifiable student data.

23 (i) "Provisional student data" means new student data proposed for in-
24 clusion in the data system.

25 (j) "Student data" means data collected and/or reported at the individ-
26 ual student level included in a student's educational record.

27 (i) "Student data" includes: (1) state and national assess-
28 ment results, including information on untested public school
29 students; (2) course taking and completion, credits earned and
30 other transcript information; (3) course grades and grade point
31 average; (4) date of birth, grade level and expected graduation
32 date/graduation cohort; (5) degree, diploma, credential attain-
33 ment and other school exit information such as general educational
34 development and drop-out data; (6) attendance and mobility; (7)
35 data required to calculate the federal four (4) year adjusted
36 secondary cohort graduation rate, including sufficient exit
37 information; (8) discipline reports limited to objective infor-
38 mation sufficient to produce the federal annual incident reports,
39 children with disabilities disciplinary reports and discipline
40 reports, including students involved with firearms; (9) reme-
41 diation; (10) special education data; (11) demographic data and
42 program participation information; and (12) files, documents,
43 images or data containing a student's educational record that are
44 stored in or transmitted through a cloud computing service.

45 (ii) A student's educational record shall not include: (1) juve-
46 nile delinquency records and criminal records unless required in
47 paragraph (k) of this subsection; (2) medical and health records;
48 (3) student social security number; (4) student biometric infor-
49 mation; (5) gun ownership records; (6) sexual orientation; (7) re-
50 ligious affiliation; (8) except for special needs and exceptional

1 students, any data collected pursuant to a statewide assessment
 2 via affective computing, including analysis of facial expres-
 3 sions, EEG brain wave patterns, skin conductance, galvanic skin
 4 response, heart rate variability, pulse, blood volume, posture
 5 and eye tracking, any data that measures psychological resources,
 6 ~~mind sets~~ mindsets, effortful control, attributes, dispositions,
 7 social skills, attitudes or intrapersonal resources.

8 (iii) All longitudinal student data shall be stored and maintained
 9 in the educational data system.

10 (k) "Student educational record" means all information directly re-
 11 lated to a student and recorded and kept in the educational data system
 12 as that term is defined in this section. Provided however, that the
 13 following shall not be kept as part of a student's permanent educational
 14 record: daily assignments, homework, reports, chapter tests or similar
 15 assessments or other schoolwork that may be considered daily or weekly
 16 work. A student educational record may include information considered
 17 to be personally identifiable.

18 (l) "Student education unique identification number" means the unique
 19 student identifier assigned by the state to each student that shall not
 20 be or include the social security number of a student in whole or in
 21 part.

22 (m) "Violation" means an act contrary to the provisions of this section
 23 that materially compromises the security, confidentiality or integrity
 24 of personally identifiable data of one (1) or more students and that re-
 25 sults in the unauthorized release or disclosure of such data.

26 (2) Unless otherwise provided for in this act, the executive office of
 27 the state board of education shall be the entity responsible for implement-
 28 ing the provisions of this act. All decisions relating to the collection and
 29 safeguarding of student data shall be the responsibility of the executive
 30 office of the state board of education.

31 (3) The state board of education shall:

32 (a) Create, publish and make publicly available a data inventory and
 33 dictionary or index of data elements with definitions of individual
 34 student data fields currently in the ~~student~~ educational data system
 35 including:

36 (i) Any individual student data required to be reported by state
 37 and federal education mandates;

38 (ii) Any individual student data that has been proposed for inclu-
 39 sion in the ~~student~~ educational data system with a statement re-
 40 garding the purpose or reason for the proposed collection; and

41 (iii) Any individual student data collected or maintained with no
 42 current purpose or reason.

43 No less frequently than annually, the state board of education shall up-
 44 date the data inventory and index of data elements provided for in this
 45 ~~subsection~~ paragraph.

46 (b) Develop, publish and make publicly available policies and proce-
 47 dures to comply with the federal family educational rights and privacy
 48 act (FERPA) and other relevant privacy laws and policies including, but
 49 not limited to, the following:

1 (i) Access to student data in the ~~student~~ student educational data sys-
2 tem shall be restricted to: (1) the authorized staff of the state
3 board of education and the state department of education and the
4 board's and the department's vendors who require such access to
5 perform their assigned duties; (2) the district and the district's
6 private vendors who require access to perform their assigned du-
7 ties and public postsecondary staff who require such access to
8 perform their assigned duties; (3) students and their parents or
9 legal guardians; and (4) the authorized staff of other state agen-
10 cies in this state as required by law and/or defined by interagency
11 data-sharing agreements. All such data-sharing agreements shall
12 be summarized in a report compiled by the state board of education
13 and submitted no later than January 15 of each year to the senate
14 education committee and the house of representatives education
15 committee;

16 (ii) Provide that public reports or responses to record requests
17 shall include aggregate data only as that term is defined in sub-
18 section (1) of this section. Multiple requests from the same indi-
19 vidual or entity for aggregated student data that, when evaluated
20 alone is not considered as personally identifiable data but when
21 combined could be used to identify a student, are subject to the
22 same restrictions as requests for personally identifiable data;

23 (iii) Develop criteria for the approval of research and data re-
24 quests from state and local agencies, the state legislature,
25 researchers and the public: (1) unless otherwise approved by the
26 state board of education, student data maintained shall remain
27 confidential; (2) unless otherwise approved by the state board of
28 education, released student data in response to research and data
29 requests may include only aggregate data; and (3) any approval of
30 the board to release personally identifiable student data shall
31 be subject to legislative approval prior to the release of such
32 information;

33 (iv) Ensure that any contract entered into by the state board of
34 education or the state department of education includes provi-
35 sions requiring and governing data destruction dates and specific
36 restrictions on the use of data;

37 (v) Provide for notification to students and parents regarding
38 their rights under federal and state law; and

39 (vi) Ensure that all school districts, primary schools, secondary
40 schools and other similar institutions entering into contracts
41 that govern databases, online services, assessments, special
42 education or instructional supports with private vendors shall
43 include in each such contract a provision that private vendors
44 are permitted to use aggregated data, or an individual student's
45 data for secondary uses, but only if the vendor discloses in clear
46 detail the secondary uses and receives written permission from the
47 student's parent or legal guardian. The contract shall also in-
48 clude either of the following: (1) a prohibition on any secondary
49 uses of student data by the private vendor including, but not
50 limited to, sales, marketing or advertising, but permitting the

1 private vendor to process or monitor such data solely to provide
 2 and maintain the integrity of the service; or (2) a requirement
 3 that the private vendor disclose in detail any secondary uses of
 4 student data including, but not limited to, sales, marketing or
 5 advertising, and the board shall obtain express parental consent
 6 for those secondary uses prior to deployment of the private ven-
 7 dor's services under the contract.

8 The state board of education and the state department of education shall
 9 ensure that any and all private vendors employed or otherwise engaged
 10 by the board or the department shall comply with the provisions of this
 11 section. Any person determined, in either a civil enforcement action
 12 initiated by the board or initiated by the department or in a court ac-
 13 tion initiated by an injured party, to have violated a provision of this
 14 section or any rule promulgated pursuant to this section shall be liable
 15 for a civil penalty not to exceed fifty thousand dollars (\$50,000) per
 16 violation. In the case of an unauthorized release of student data, the
 17 state board of education or the state department of education shall no-
 18 tify the parent or student of the unauthorized release of student data
 19 that includes personally identifiable information in a manner consis-
 20 tent with the provisions of section 28-51-105, Idaho Code.

21 (c) Unless otherwise approved by the state board of education, any data
 22 deemed confidential pursuant to this act shall not be transferred to any
 23 federal, state or local agency or other organization or entity outside
 24 of the state of Idaho, with the following exceptions:

25 (i) A student transfers out of state or a school or district seeks
 26 help with locating an out-of-state transfer;

27 (ii) A student leaves the state to attend an out-of-state institu-
 28 tion of higher education or training program;

29 (iii) A student voluntarily participates in a program for which
 30 such a data transfer is a condition or requirement of participa-
 31 tion;

32 (iv) The state board of education or the state department of ed-
 33 ucation may share such data with a vendor to the extent it is nec-
 34 essary as part of a contract that governs databases, online ser-
 35 vices, assessments, special education or instructional supports
 36 with a vendor;

37 (v) Pursuant to a written agreement between the two (2) school
 38 districts, where a student transfers from an Idaho district abut-
 39 ting upon another state to the nearest appropriate district in
 40 such neighboring state in accordance with the provisions of sec-
 41 tion 33-1403, Idaho Code; or

42 (vi) A student is classified as "migrant" for reporting purposes
 43 as required by the federal government in order to assure link-
 44 age between the various states of migrant students' educational
 45 records;

46 (d) Develop a detailed data security plan that includes:

47 (i) Guidelines for authorizing access to ~~the~~ student data in the
 48 educational data system and to individual student data including
 49 guidelines for authentication of authorized access;

- 1 (ii) Guidelines relating to administrative safeguards providing
2 for the security of electronic and physical data; such guidelines
3 should include provisions relating to data encryption as well as
4 staff training to better ensure the safety and security of data;
5 (iii) Privacy compliance standards;
6 (iv) Privacy and security audits;
7 (v) Breach planning, notification and procedures; and
8 (vi) Data retention and disposition policies;

9 (e) Ensure routine and ongoing compliance with FERPA, other relevant
10 privacy laws and policies, and the privacy and security policies and
11 procedures developed under the authority of this act, including the
12 performance of compliance audits;

13 (f) Ensure that any contracts that govern databases, online services,
14 assessments or instructional supports that include student data and are
15 outsourced to private vendors, include express provisions that safe-
16 guard privacy and security, contain the restrictions on secondary uses
17 of student data described in ~~subsection (3) paragraph~~ (b) (vi) of this
18 subsection, provides for data destruction, including a time frame for
19 data destruction, and includes penalties for noncompliance with this
20 paragraph; and

21 (g) Notify the governor and the legislature annually of the following:

22 (i) New student data proposed for inclusion in the ~~state student~~
23 educational data system: (1) any new student data collection pro-
24 posed by the state board of education becomes a provisional re-
25 quirement to allow districts and their local data system vendors
26 the opportunity to meet the new requirement; and (2) the state
27 board of education must submit any new provisional student data
28 collection to the governor and the legislature for their approval
29 within one (1) year in order to make the new student data a per-
30 manent requirement through the administrative rules process. Any
31 provisional student data collection not approved by the governor
32 and the legislature by the end of the next legislative session ex-
33 pires and must be deleted and no longer collected;

34 (ii) Changes to existing data collections required for any rea-
35 son, including changes to federal reporting requirements made by
36 the U.S. department of education;

37 (iii) An explanation of any exceptions granted by the state
38 board of education in the past year regarding the release or
39 out-of-state transfer of student data;

40 (iv) The results of any and all privacy compliance and security
41 audits completed in the past year. Notifications regarding pri-
42 vacy compliance and security audits shall not include any infor-
43 mation that would pose a security threat to the state educational
44 data system or to local student information systems or to the se-
45 cure transmission of data between state and local systems by ex-
46 posing vulnerabilities; and

47 (v) Data collected specific to a grant program where such data is
48 not otherwise included in student data.

49 (4) The state board of education shall adopt rules to implement the pro-
50 visions of this act.

1 (5) Upon the effective date of this act, any existing collection of stu-
2 dent data in the educational data system shall not be considered a new stu-
3 dent data collection in accordance with this section.

4 (6) Unless otherwise prohibited by law or court order, school districts
5 must provide parents or guardians with copies of all of their child's educa-
6 tional records, upon request, if such child has not attained the age of eigh-
7 teen (18) years.

8 (7) The state board of education shall develop a model policy for school
9 districts and public charter schools that will govern data collection, ac-
10 cess, security and use of such data. The model policy shall be consistent
11 with the provisions of this act. In order to assure that student educa-
12 tional information is treated safely and securely and in a consistent manner
13 throughout the state, each district and public charter school shall adopt
14 and implement the model policy. The state department of education shall
15 provide outreach and training to the districts and public charter schools
16 to help implement the policy. A current copy of such policy shall be posted
17 to the school district's website. Any district or public charter school
18 that fails to adopt, implement and post the policy where any inappropriate
19 release of data occurs shall be liable for a civil penalty not to exceed fifty
20 thousand dollars (\$50,000). Such civil penalty may be imposed per viola-
21 tion. The method of recovery of the penalty shall be by a civil enforcement
22 action brought by the state board of education, with the assistance of the
23 office of the state attorney general, in the district court in and for the
24 county where the violation occurred. All civil penalties collected under
25 this section shall be paid into the general fund of the state.

26 (8) The state board of education and the department of education shall
27 ensure that the educational data system is maintained securely at all times
28 and that data security and encryption practices are maintained.