

SSB 5316 - S AMD 24

By Senators Dammeier, Rolfes

PULLED 3/4/2015

1 Strike everything after the enacting clause and insert the
2 following:

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

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

14 The definitions in this section apply throughout sections 3
15 through 8 of this act unless the context clearly requires otherwise.

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

19 (2) "Personally identifiable student-level data" includes, but is
20 not limited to:

21 (a) The student's name;

22 (b) The name of the student's parent or other family members;

23 (c) The address of the student or student's family;

24 (d) A personal identifier, such as the student's social security
25 number, or student number;

26 (e) Other indirect identifiers, such as the student's date of
27 birth, place of birth, and mother's maiden name;

28 (f) Other information that, alone or in combination, is linked or
29 linkable to a specific student that would allow a reasonable person
30 in the school community, who does not have personal knowledge of the
31 relevant circumstances, to identify the student with reasonable
32 certainty; or

1 (g) Information requested by a person who the educational agency
2 or institution reasonably believes knows the identity of the student
3 to whom the education record relates.

4 (3) "School enhancement products and services" means school-
5 related products and services that are customarily offered under the
6 direction or for the benefit of the public agency, organization, or
7 school community, such as school photography, yearbooks, graduation
8 products, and class rings.

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

11 The superintendent of public instruction, or any employee or
12 contractor of the superintendent, shall not collect, retain, or use
13 in any manner, student biometric information. For the purposes of
14 this section, "biometric information" includes, but is not limited
15 to, a fingerprint or hand scan, a retina or iris scan, a voice print,
16 or a facial geometry scan of a student.

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

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

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

33 (a) Educational studies authorized or mandated by the state
34 legislature;

35 (b) Studies initiated by other state educational authorities and
36 authorized by the office of the superintendent of public instruction,
37 including analysis conducted by the education data center established
38 under RCW 43.41.400; and

1 (c) Studies initiated by other public or private agencies and
2 organizations and authorized by the office of the superintendent of
3 public instruction.

4 (3) The office of the superintendent of public instruction shall
5 grant parents and legal guardians access to any student record that
6 is a record of a child of the parent or a child in the care of the
7 legal guardian, including records that contain personally
8 identifiable data, unless the student is age eighteen or older.

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

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

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

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

25 (d) A record must be kept of any requests for access to the
26 personally identifiable student-level data;

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

32 (5) Any public agency or organization that possesses personally
33 identifiable student-level data shall take special precautions to
34 avoid accidental disclosure of the data, including encryption
35 whenever feasible. Private contractors or vendors shall employ
36 industry standard methods of encryption, in transit and at rest, for
37 all personally identifiable student-level data that they receive,
38 store, use, and transmit.

39 ((+4)) (6) Nothing in this section precludes the office of the
40 superintendent of public instruction from collecting and distributing

1 aggregate data about students or student-level data without
2 personally identifiable information.

3 (7) Nothing in this section precludes the office of the
4 superintendent of public instruction from releasing directory
5 information for the purpose of making available to parents and
6 students school enhancement products and services as authorized by
7 the office of the superintendent of public instruction, as long as
8 any outside party receiving directory information for these purposes
9 is prohibited from secondary use or sale of the information and is
10 required to comply with all other provisions of this section.

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

13 (1) A K-12 data governance group shall be established within the
14 office of the superintendent of public instruction to assist in the
15 design and implementation of a K-12 education data improvement system
16 for financial, student, and educator data. It is the intent that the
17 data system reporting specifically serve requirements for teachers,
18 parents, superintendents, school boards, the office of the
19 superintendent of public instruction, the legislature, and the
20 public.

21 (2) The K-12 data governance group shall include representatives
22 of the education data center, the office of the superintendent of
23 public instruction, the legislative evaluation and accountability
24 program committee, the professional educator standards board, the
25 state board of education, and school district staff, including
26 information technology staff. Additional entities with expertise in
27 education data may be included in the K-12 data governance group.

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

29 (a) Develop a detailed data security plan and procedures to
30 govern the use and maintenance of data systems, including ensuring
31 the use of appropriate administrative, physical, and technical
32 safeguards for electronic and physical personally identifiable
33 student-level data at the state level; and develop a model plan for
34 school districts to use to safeguard personally identifiable student-
35 level data at the school district level;

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

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

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

9 ~~((d))~~ (e) Conduct a gap analysis of current and planned
10 information compared to the needs requirement document, including an
11 analysis of the strengths and limitations of an education data system
12 and programs currently used by school districts and the state, and
13 specifically the gap analysis must look at the extent to which the
14 existing data can be transformed into canonical form and where
15 existing software can be used to meet the needs requirement document;

16 ~~((e))~~ (f) Focus on financial and cost data necessary to support
17 the new K-12 financial models and funding formulas, including any
18 necessary changes to school district budgeting and accounting, and on
19 assuring the capacity to link data across financial, student, and
20 educator systems; and

21 ~~((f))~~ (g) Define the operating rules and governance structure
22 for K-12 data collections, ensuring that data systems are flexible
23 and able to adapt to evolving needs for information, within an
24 objective and orderly data governance process for determining when
25 changes are needed and how to implement them. Strong consideration
26 must be made to the current practice and cost of migration to new
27 requirements. The operating rules should delineate the coordination,
28 delegation, and escalation authority for data collection issues,
29 business rules, and performance goals for each K-12 data collection
30 system, including:

31 (i) Defining and maintaining standards for privacy and
32 confidentiality;

33 (ii) Setting data collection priorities;

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

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

36 (v) Ensuring data accuracy; and

37 (vi) Establishing minimum standards for school, student,
38 financial, and teacher data systems. Data elements may be specified
39 "to the extent feasible" or "to the extent available" to collect more
40 and better data sets from districts with more flexible software.

1 Nothing in RCW 43.41.400, this section, or RCW 28A.655.210 should be
2 construed to require that a data dictionary or reporting should be
3 hobbled to the lowest common set. The work of the K-12 data
4 governance group must specify which data are desirable. Districts
5 that can meet these requirements shall report the desirable data.
6 Funding from the legislature must establish which subset data are
7 absolutely required.

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

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

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

19 (a) The percentage of data compliance and data accuracy by school
20 district;

21 (b) The magnitude of spending per student, by student estimated
22 by the following algorithm and reported as the detailed summation of
23 the following components:

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

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

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

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

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

39 (d) The cost of K-12 special education services per student, by
40 student receiving those services, by school district, estimated by

1 the algorithm in (b) of this subsection, and reported in the same
2 manner as required in (b) of this subsection;

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

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

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

11 (h) Percentage of a classroom teacher per student on a per
12 student basis; and

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

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

23 (7) All reports and data referenced in this section and RCW
24 43.41.400 and 28A.655.210 shall be made available in a manner
25 consistent with the technical requirements of the legislative
26 evaluation and accountability program committee and the education
27 data center so that selected data can be provided to the legislature,
28 governor, school districts, and the public.

29 (8) Reports shall contain data to the extent it is available. All
30 reports must include documentation of which data are not available or
31 are estimated. Reports must not be suppressed because of poor data
32 accuracy or completeness. Reports may be accompanied with
33 documentation to inform the reader of why some data are missing or
34 inaccurate or estimated.

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

37 No educational service district board of directors, employee, or
38 contractor may collect, retain, or use in any manner, student
39 biometric information. For the purposes of this section, "biometric

1 information" includes, but is not limited to, a fingerprint or hand
2 scan, a retina or iris scan, a voice print, or a facial geometry scan
3 of a student.

4 **Sec. 7.** RCW 28A.320.035 and 1997 c 267 s 1 are each amended to
5 read as follows:

6 (1)(a) The board of directors of a school district may contract
7 with other school districts, educational service districts, public or
8 private organizations, agencies, schools, or individuals to implement
9 the board's powers and duties. The board of directors of a school
10 district may contract for goods and services, including but not
11 limited to contracts for goods and services as specifically
12 authorized in statute or rule, as well as other educational,
13 instructional, and specialized services. When a school district board
14 of directors contracts for educational, instructional, or specialized
15 services, the purpose of the contract must be to improve student
16 learning or achievement.

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

20 (c) Any public agency or organization or any private contractor
21 or vendor, that is authorized by the school district board of
22 directors to access student-level data must adhere to all federal and
23 state laws protecting student data and safeguarding the
24 confidentiality and privacy of student records. All public agencies
25 or organizations and private contractors or vendors, that receive
26 personally identifiable student-level data shall ensure the
27 following:

28 (i) All personally identifiable student-level data shall be used
29 for the purpose for which the disclosure was specifically intended;

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

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

36 (iv) A record must be kept of any requests for access to the
37 personally identifiable student-level data;

38 (v) No personally identifiable student-level data shall be
39 disclosed to any other individual or entity without the prior written

1 consent of the parent, legal guardian, or student if the student is
2 over the age of eighteen unless the entity is a designated education
3 agency that abides by the data security requirements of this section.

4 (d) Any public agency or organization that possesses personally
5 identifiable student-level data shall take special precautions to
6 avoid accidental disclosure of the data, including encryption
7 whenever feasible. Private contractors or vendors shall employ
8 industry standard methods of encryption, in transit and at rest, for
9 all personally identifiable student-level data that they receive,
10 store, use, and transmit.

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

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

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

24 No school district board of directors, employee, or contractor
25 may collect, retain, or use in any manner, student biometric
26 information. For the purposes of this section, "biometric
27 information" includes, but is not limited to, a fingerprint or hand
28 scan, a retina or iris scan, a voice print, or a facial geometry scan
29 of a student.

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

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

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

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

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

11 (~~(2)~~) (b) Prohibiting the release of student information
12 without the written consent of the student's parent or guardian,
13 after the parent or guardian has been informed what information is
14 being requested, who is requesting the information and why, and what
15 will be done with the information.

16 (3) The procedure adopted by the school district must be in
17 compliance with the family educational and privacy rights act of
18 1974, 20 U.S.C. Sec. 1232g."

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19 On page 1, line 2 of the title, after "information;" strike the
20 remainder of the title and insert "amending RCW 28A.300.500,
21 28A.300.507, 28A.320.035, and 28A.605.030; adding new sections to
22 chapter 28A.300 RCW; adding a new section to chapter 28A.310 RCW;
23 adding a new section to chapter 28A.320 RCW; and creating a new
24 section."

EFFECT: The following changes are made in section 4 regarding the
office of the superintendent of public instruction, and section 7
regarding the board of directors of a school district:

Changes the definition of "personally identifiable student-level
data."

Removes the provision that states personally identifiable
student-level data must not be disclosed to any other third party
unless the disclosure is necessary to meet (1) a legitimate need for
the data to support the particular student's education or (2) the
needs of an educational study or educational purpose specifically
authorized by a public agency.

Removes the provision that states nothing limits disclosure of
information allowed under FERPA.

Removes the word "solely" from the provision limiting the use of personally identifiable student-level data to the purpose for which the disclosure was specifically intended.

States that data must be destroyed when it is no longer required for the purposes for which it was disclosed.

Removes the provision that applies to public agencies or organizations and private contractors or vendors that receive personally identifiable student-level data and requires them to grant parents and legal guardians access to any student record that is a record of a child of the parent or a child in the care of the legal guardian.

Moves the provision regarding directory information so that it applies to the entire section.

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