

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The P-20 Longitudinal Education Data System Act
5 is amended by adding Section 32 as follows:

6 (105 ILCS 13/32 new)

7 Sec. 32. Personally identifiable information limitations.

8 (a) In this Section:

9 "Education records" has the meaning ascribed to that term
10 in 34 CFR 99.3.

11 "Organization" means not-for-profit organizations, think
12 tanks, or other organizations conducting research studies.

13 "Personally identifiable information" means (i) any
14 personally identifiable information under the federal Family
15 Educational Rights Act of 1974 (FERPA), other than "directory
16 information" as that term is defined in Section 99.3 of the
17 federal regulations implementing FERPA (34 CFR 99.3), and (ii)
18 the personally identifiable information of teachers, other
19 educators, and school administrators, other than publicly
20 available, school-related information such as the name, school
21 location, and grade levels or subjects taught.

22 (b) If an audit or evaluation or a compliance or
23 enforcement activity in connection with legal requirements

1 that relate to State-supported or school district-supported
2 educational programs requires or is used as the basis for
3 granting access to personally identifiable information, the
4 State Board or a school shall designate parties only under
5 their direct control to act as authorized representatives to
6 conduct the audit, evaluation, or activity.

7 (c) The State Board or schools may not disclose any
8 personally identifiable information, including personally
9 identifiable information from education records of students,
10 to a contractor, consultant, or other party to whom the State
11 Board or school has outsourced services or functions without
12 providing notice to parents, guardians, and eligible students
13 by posting the intent to disclose the information on the
14 Internet website of the school or State Board at least 30 days
15 in advance or as soon as practicable, unless that outside
16 party:

17 (1) performs an institutional service or function for
18 which the State Board or the school would otherwise use
19 employees;

20 (2) is under the direct control of the State Board or
21 the school with respect to the use and maintenance of
22 education records;

23 (3) limits internal access to education records to
24 those individuals who are determined to have legitimate
25 educational interests;

26 (4) does not use the education records for any purposes

1 other than those authorized in its contract;

2 (5) does not disclose any personally identifiable
3 information to any other party (i) without the prior
4 notification to the eligible student, parent, or guardian
5 or (ii) unless required by law and the party provides a
6 notice of the disclosure to the State Board or school board
7 that provided the information no later than the time the
8 information is disclosed, to the extent allowed by law or
9 by the terms of a court order;

10 (6) maintains reasonable administrative, technical,
11 and physical safeguards to protect the security,
12 confidentiality, and integrity of personally identifiable
13 information in its custody and conducts regular security
14 audits to confirm the efficacy of those safeguards;

15 (7) uses appropriate encryption technologies to
16 protect data while in motion or in its custody from
17 unauthorized disclosure;

18 (8) has sufficient administrative and technical
19 procedures to monitor continuously the security of
20 personally identifiable information in its custody;

21 (9) maintains a breach remediation plan prior to
22 initial receipts of the personally identifiable
23 information and reports breaches as specified by the
24 Personal Information Protection Act;

25 (10) reports all actual security breaches to the State
26 Board or the school that provided personally identifiable

1 information and education records as soon as possible, but
2 no later than 72 hours after an actual breach was known or
3 in the most expedient amount of time possible under the
4 circumstances;

5 (11) agrees, in the event of a security breach or an
6 unauthorized disclosure of personally identifiable
7 information, to pay all costs and liabilities incurred by
8 the State Board or school related to the security breach or
9 unauthorized disclosure, including without limitation the
10 costs of responding to inquiries about the security breach
11 or unauthorized disclosure, of notifying the subjects of
12 personally identifiable information about the breach, of
13 mitigating the effects of the breach for the subjects of
14 personally identifiable information, and of investigating
15 the cause or consequences of the security breach or
16 unauthorized disclosure; and

17 (12) destroys or returns to the State Board or school
18 all personally identifiable information in its custody
19 upon request and at the termination of the contract.

20 (d) The State Board or schools may disclose personally
21 identifiable information from an education record of a student
22 without the consent of the eligible student, parent, or
23 guardian to a party conducting studies for or on behalf of the
24 State Board or school to (i) develop, validate, or administer
25 predictive tests, (ii) administer student aid programs, or
26 (iii) improve instruction, provided that the outside party

1 conducting the study meets all of the requirements for
2 contractors set forth in subsection (c) of this Section.

3 (d-5) The State Board or schools may disclose personally
4 identifiable information from an education record of a student
5 to researchers at an organization or accredited post-secondary
6 educational institution conducting research pursuant to a
7 specific, written agreement with the school or State Board and
8 in accordance with the federal Family Educational Rights and
9 Privacy Act of 1974, provided that:

10 (1) the nature of the research is first publicly
11 disclosed to parents, guardians, and eligible students on
12 the Internet website of the school or State Board at least
13 30 days in advance of the research being conducted or as
14 soon as practicable;

15 (2) the organization or institution and the school or
16 State Board enter into a data use agreement that complies
17 with the federal Family Educational Rights and Privacy Act
18 of 1974 and its accompanying rules; and

19 (3) the organization or institution uses personally
20 identifiable information from school student records only
21 to meet the purpose or purposes of the study as stated in
22 the written agreement.

23 For purposes of this subsection (d-5), any information by
24 which a student may be individually or personally identified
25 may only be released, transferred, disclosed, or otherwise
26 disseminated as contemplated by the agreement between the

1 parties. The school student records must be redacted prior to
2 analysis by the organization or institution. Any personally
3 identifiable information used to link data sets must be stored
4 in a secure data file or location outside of the secure data
5 storage where redacted information from the school regarding
6 student records is stored. The organization or institution
7 shall implement and adhere to policies and procedures that
8 restrict access to information by which a student may be
9 individually or personally identified. The organization or
10 institution shall designate an individual to act as the
11 custodian of the personally identifiable information who is
12 responsible for restricting access to that information.

13 Nothing in this subsection (d-5) prohibits or limits the
14 ability of the State Board or any school to provide personally
15 identifiable information about individual students to a school
16 official, organization, or institution for the purposes of
17 developing, administering, scoring, or interpreting results of
18 student assessments or predictive tests if those assessments or
19 tests require individualized development or administration
20 based on the needs of individual students.

21 (e) The State Board or schools may not disclose any
22 personally identifiable information, including personally
23 identifiable information from education records of students,
24 without the written consent of eligible students, parents, or
25 guardians to any party for a commercial use, including without
26 limitation marketing products or services, compiling lists for

1 sale or rental, developing products or services, or creating
2 individual, household, or group profiles, nor may such
3 disclosure be made for the provision of services other than
4 contracting, studies, and audits or evaluations as authorized
5 and limited by subsections (c), (d), and (d-5) of this Section.

6 (f) The State Board or schools may not, directly or through
7 contracts with outside parties, maintain personally
8 identifiable information, including personally identifiable
9 information from education records of students, without the
10 proper notification to eligible students, parents, or
11 guardians, unless the maintenance of the information is:

12 (1) explicitly mandated in federal or State statute;

13 (2) administratively required for the proper
14 performance of their duties under the law and is relevant
15 to and necessary for the delivery of services; or

16 (3) designed to support a study of students or former
17 students.

18 (g) The State Board and schools shall publicly and
19 conspicuously disclose on their Internet websites and through
20 annual electronic notification to the chairperson of the House
21 of Representatives Elementary & Secondary Education Committee
22 and the chairperson of the Senate Education Committee the
23 existence and character of any personally identifiable
24 information that they, directly or through contracts with
25 outside parties, maintain. The disclosure and notification
26 shall include:

1 (1) the name and location of the data repository where
2 the information is maintained;

3 (2) the legal authority that authorizes the
4 establishment and existence of the data repository;

5 (3) the principal purpose or purposes for which the
6 information is intended to be used;

7 (4) the categories of individuals on whom records are
8 maintained in the data repository;

9 (5) the categories of records maintained in the data
10 repository;

11 (6) each expected disclosure of the records contained
12 in the data repository, including the categories of
13 recipients and the purpose of each disclosure;

14 (7) the policies and practices of the State Board or
15 school regarding storage, retrievability, access controls,
16 retention, and disposal of the records;

17 (8) the title and business address of the State Board
18 or school official who is responsible for the data
19 repository and the name and business address of any
20 contractor or other outside party maintaining the data
21 repository for or on behalf of the State Board or school;

22 (9) the procedures whereby eligible students, parents,
23 or guardians can be notified at their request if the data
24 repository contains a record pertaining to the student,
25 parent, or guardian;

26 (10) the procedures whereby eligible students,

1 parents, or guardians can be notified at their request on
2 how to gain access to any record pertaining to the student,
3 parent, or guardian contained in the data repository and
4 how they can contest its content; and

5 (11) the categories of sources of records in the data
6 repository.

7 (h) The State Board and schools may not append education
8 records with personally identifiable information obtained from
9 other federal or State agencies through data matches without
10 the proper notification to eligible students, parents, or
11 guardians unless the data matches are:

12 (1) explicitly mandated in federal or State statute;

13 (2) administratively required for the proper
14 performance of their duties under the law and are relevant
15 to and necessary for the delivery of services; or

16 (3) designed to support a study of students or former
17 students.

18 (i) Any person aggrieved by any violation of this Section
19 may institute an action for injunctive relief in the circuit
20 court of the county in which the violation has occurred or the
21 circuit court of the county in which the school is located. Any
22 person injured by a willful or negligent violation of this
23 Section may institute an action for damages in the circuit
24 court of the county in which the violation has occurred or the
25 circuit court of the county in which the school is located. In
26 the case of any successful action under this paragraph, any

1 person or school found to have willfully or negligently
2 violated any provision of this Section is liable to the
3 plaintiff for the plaintiff's damages, the costs of the action,
4 and reasonable attorney's fees, as determined by the court.

5 Actions for injunctive relief to secure compliance with
6 this Section may be brought by the State Board, by the State's
7 Attorney of the county in which the alleged violation has
8 occurred or the State's Attorney of the county in which the
9 school is located, in each case in the circuit court of such
10 county.

11 Willful failure to comply with this Section is a petty
12 offense, except that any person who willfully and maliciously
13 falsifies any school student record, student permanent record,
14 or student temporary record is guilty of a Class A misdemeanor.

15 Absent proof of malice, no cause of action or claim for
16 relief, civil or criminal, may be maintained against any
17 school, employee or official of a school, or person acting at
18 the direction of a school for any statement made or judgment
19 expressed in any entry to a school student record of a type
20 that does not violate this Section or rules adopted by the
21 State Board, provided that this paragraph does not limit or
22 deny any defense available under existing law.

23 (j) Nothing contained in this Section shall be construed as
24 creating a private right of action against the State Board or a
25 school.

26 (k) Nothing in this Section shall limit the administrative

1 use of personally identifiable information by a person acting
2 exclusively in the person's capacity as an employee of a
3 school, this State, a court, or the federal government that is
4 otherwise required by law.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.