

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 14-0735.01 Michael Dohr x4347

HOUSE BILL 14-1294

HOUSE SPONSORSHIP

Murray, Court

SENATE SPONSORSHIP

Steadman and Jahn,

House Committees

Education
Appropriations

Senate Committees

Education
Appropriations

A BILL FOR AN ACT

101 CONCERNING STUDENT DATA COLLECTION PRIVACY PROTECTIONS
102 ADMINISTERED BY THE DEPARTMENT OF EDUCATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires the state board of education (state board) to publish an inventory and dictionary or index of the individual student-level data currently in the student data system that is required to be reported by state and federal education mandates and any student data proposed for inclusion in the student data system. The state board must

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Amended 2nd Reading
April 29, 2014

HOUSE
3rd Reading Unamended
April 14, 2014

HOUSE
Amended 2nd Reading
April 10, 2014

develop policies to comply with the federal "Family Educational Rights and Privacy Act of 1974" and other relevant privacy laws and policies.

The department of education (department) must not provide individual student data to other organizations or agencies outside the state except under specified circumstances. The department may only use aggregate data in public reports and must develop a detailed data security plan. The department shall develop a data security template for local school districts to use.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that the privacy of Colorado citizens is of the
4 utmost importance, and protecting their privacy is a top priority for the
5 lawmakers of this state. The notion of privacy has vastly changed with
6 technological advancement, developments such as "the cloud", and the
7 exponential growth of social media popularity. Although this has changed
8 the public perception of privacy, it remains imperative that personal
9 information stay confidential unless otherwise chosen on an individual
10 basis. The privacy of our children is critically important, especially in
11 regard to their K-12 educational experience and the student data collected
12 during this time. Schools are a safe environment, and an important
13 component of maintaining security is ensuring student privacy and
14 protecting student data. Despite the importance of protecting the privacy
15 of our children, Colorado law is not currently clear on how student data
16 is to be handled. As such, transparency in data collection and security is
17 crucial. It is critical that parents have the opportunity to understand how
18 student data is collected, where the data is stored, and how and why the
19 data is utilized.

20 (2) For this reason, the general assembly finds that it is the duty
21 of the Colorado department of education to publish an index of utilized

1 data elements as well as privacy policies regarding accessibility to the
2 data and notices of student and parent rights.

3 (3) Furthermore, the general assembly finds that the department
4 of education must have a detailed data security plan regarding the
5 protection and confidentiality of all Colorado student data, whether the
6 data is stored inside or outside the state, and must create a data security
7 template for school districts to use to create their own data security plans.

8 **SECTION 2.** In Colorado Revised Statutes, **add** 22-2-309 as
9 follows:

10 **22-2-309. Student data - accessibility - transparency -**
11 **accountability - definitions.** (1) THIS SECTION SHALL BE KNOWN AND
12 MAY BE CITED AS THE "STUDENT DATA PROTECTION, ACCESSIBILITY,
13 TRANSPARENCY, AND ACCOUNTABILITY ACT OF 2014".

14 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
15 REQUIRES:

16 (a) "AGGREGATE DATA" MEANS DATA COLLECTED AND REPORTED
17 AT THE GROUP, COHORT, OR INSTITUTIONAL LEVEL.

18 (b) "DATA SYSTEM" MEANS THE COLORADO STATE DEPARTMENT
19 OF EDUCATION STUDENT DATA SYSTEM.

20 (c) "PERSONALLY IDENTIFIABLE DATA" MEANS A DATASET THAT
21 IS LINKED TO A SPECIFIC STUDENT OR THE STUDENT'S PARENT OR LEGAL
22 GUARDIAN AND THAT WOULD ALLOW A REASONABLE PERSON IN THE
23 SCHOOL COMMUNITY, WHO DOES NOT HAVE KNOWLEDGE OF THE
24 RELEVANT CIRCUMSTANCES, TO IDENTIFY THE STUDENT, PARENT, OR
25 LEGAL GUARDIAN WITH REASONABLE CERTAINTY.

26 (d) "STATE-ASSIGNED STATEWIDE STUDENT IDENTIFIER" MEANS
27 THE UNIQUE STUDENT IDENTIFIER ASSIGNED BY THE DEPARTMENT TO EACH

1 STUDENT THAT MUST NEITHER BE NOR INCLUDE THE SOCIAL SECURITY
2 NUMBER OF A STUDENT IN WHOLE OR IN SEQUENTIAL PART.

3 (e) (I) "STUDENT DATA" MEANS DATA THAT IS COLLECTED AND
4 STORED BY THE DEPARTMENT AT THE INDIVIDUAL STUDENT LEVEL AND
5 INCLUDED IN A STUDENT'S EDUCATIONAL RECORD.

6 (II) "STUDENT DATA" INCLUDES:

7 (A) STATE-ADMINISTERED ASSESSMENT RESULTS, INCLUDING
8 PARTICIPATION INFORMATION;

9 (B) COURSES TAKEN AND COMPLETED, CREDITS EARNED, AND
10 OTHER TRANSCRIPT INFORMATION;

11 (C) COURSE GRADES AND GRADE POINT AVERAGE;

12 (D) GRADE LEVEL AND EXPECTED GRADUATION YEAR;

13 (E) DEGREE, DIPLOMA, CREDENTIAL ATTAINMENT, OR OTHER
14 SCHOOL EXIT INFORMATION;

15 (F) ATTENDANCE AND MOBILITY INFORMATION BETWEEN AND
16 WITHIN COLORADO SCHOOL DISTRICTS;

17 (G) SPECIAL EDUCATION DATA AND SPECIAL EDUCATION
18 DISCIPLINE REPORTS LIMITED TO OBJECTIVE INFORMATION THAT IS
19 SUFFICIENT TO PRODUCE THE FEDERAL TITLE IV ANNUAL INCIDENT
20 REPORT;

21 (H) DATE OF BIRTH, FULL NAME, GENDER, RACE, AND ETHNICITY;

22 AND

23 (I) PROGRAM PARTICIPATION INFORMATION REQUIRED BY STATE
24 OR FEDERAL LAW.

25 (3) THE STATE BOARD SHALL:

26 (a) CREATE, PUBLISH, AND MAKE PUBLICLY AVAILABLE A DATA
27 INVENTORY AND DICTIONARY OR INDEX OF DATA ELEMENTS WITH

1 DEFINITIONS OF INDIVIDUAL STUDENT DATA FIELDS CURRENTLY USED IN
2 THE STUDENT DATA SYSTEM INCLUDING:

3 (I) INDIVIDUAL STUDENT DATA THAT SCHOOL DISTRICTS AND
4 SCHOOLS ARE REQUIRED TO REPORT BY STATE AND FEDERAL EDUCATION
5 MANDATES; AND

6 (II) INDIVIDUAL STUDENT DATA THAT IS PROPOSED FOR INCLUSION
7 IN THE STUDENT DATA SYSTEM WITH A STATEMENT REGARDING THE
8 PURPOSE OR REASON FOR THE PROPOSED COLLECTION;

9 (b) DEVELOP, PUBLISH, AND MAKE PUBLICLY AVAILABLE POLICIES
10 AND PROCEDURES TO COMPLY WITH THE FEDERAL "FAMILY EDUCATIONAL
11 RIGHTS AND PRIVACY ACT OF 1974", 20 U.S.C. SEC. 1232g, AND OTHER
12 RELEVANT PRIVACY LAWS AND POLICIES, INCLUDING BUT NOT LIMITED TO
13 POLICIES THAT RESTRICT ACCESS TO PERSONALLY IDENTIFIABLE DATA
14 IN THE STUDENT DATA SYSTEM TO:

15 (I) THE AUTHORIZED STAFF OF THE DEPARTMENT THAT REQUIRE
16 ACCESS TO PERFORM ASSIGNED OR CONTRACTUAL DUTIES, INCLUDING
17 STAFF AND CONTRACTORS FROM THE OFFICE OF INFORMATION AND
18 TECHNOLOGY THAT ARE ASSIGNED TO THE DEPARTMENT;

19 (II) THE DEPARTMENT'S CONTRACTORS THAT REQUIRE ACCESS TO
20 PERFORM ASSIGNED OR CONTRACTUAL DUTIES THAT COMPLY WITH THE
21 REQUIREMENTS SPECIFIED BY PARAGRAPH (g) OF THIS SUBSECTION (3);

22 (III) SCHOOL DISTRICT ADMINISTRATORS, TEACHERS, AND SCHOOL
23 PERSONNEL WHO REQUIRE ACCESS TO PERFORM ASSIGNED DUTIES;

24 (IV) STUDENTS AND THEIR PARENTS; AND

25 (V) THE AUTHORIZED STAFF OF OTHER STATE AGENCIES,
26 INCLUDING PUBLIC INSTITUTIONS OF HIGHER EDUCATION, AS REQUIRED BY
27 LAW OR DEFINED BY INTERAGENCY DATA-SHARING AGREEMENTS;

- 1 (c) DEVELOP USER-FRIENDLY INFORMATION FOR THE PUBLIC
2 RELATED TO THE DEPARTMENT'S DATA-SHARING AGREEMENTS;
- 3 (d) DEVELOP A DETAILED DATA SECURITY PLAN THAT INCLUDES:
4 (I) GUIDELINES FOR AUTHORIZING ACCESS TO THE STUDENT DATA
5 SYSTEM AND TO INDIVIDUAL STUDENT DATA, INCLUDING GUIDELINES FOR
6 AUTHENTICATING AUTHORIZED ACCESS;
7 (II) PRIVACY COMPLIANCE STANDARDS;
8 (III) PRIVACY AND SECURITY AUDITS;
9 (IV) SECURITY BREACH PLANNING, NOTICE, AND PROCEDURES;
10 (V) DATA RETENTION AND DISPOSITION POLICIES WHICH MUST
11 INCLUDE SPECIFIC CRITERIA FOR IDENTIFYING WHEN AND HOW THE DATA
12 WILL BE DESTROYED;
13 (VI) GUIDANCE FOR SCHOOL DISTRICTS AND STAFF REGARDING
14 DATA USE;
15 (VII) CONSEQUENCES FOR SECURITY BREACHES; AND
16 (VIII) STAFF TRAINING REGARDING THE POLICIES;
- 17 (e) ENSURE ROUTINE AND ONGOING COMPLIANCE BY THE
18 DEPARTMENT WITH THE FEDERAL "FAMILY EDUCATIONAL RIGHTS AND
19 PRIVACY ACT OF 1974", 20 U.S.C. SEC. 1232g, OTHER RELEVANT PRIVACY
20 LAWS AND POLICIES, AND THE PRIVACY AND SECURITY POLICIES AND
21 PROCEDURES DEVELOPED UNDER THE AUTHORITY OF THIS SECTION,
22 INCLUDING THE PERFORMANCE OF COMPLIANCE AUDITS;
- 23 (f) ENSURE THAT AGREEMENTS INVOLVING THE DISCLOSURE OF
24 STUDENT DATA FOR RESEARCH CONDUCTED ON BEHALF OF THE
25 DEPARTMENT TO DEVELOP, VALIDATE, OR ADMINISTER PREDICTIVE TESTS;
26 ADMINISTER STUDENT AID PROGRAMS; OR IMPROVE INSTRUCTION MUST:
27 (I) SPECIFY THE PURPOSE, SCOPE, AND DURATION OF THE STUDY OR

1 STUDIES AND THE INFORMATION TO BE DISCLOSED;

2 (II) REQUIRE THE ORGANIZATION TO USE PERSONALLY
3 IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS ONLY TO MEET
4 THE PURPOSE OR PURPOSES OF THE STUDY AS STATED IN THE WRITTEN
5 AGREEMENT;

6 (III) REQUIRE THE ORGANIZATION TO CONDUCT THE STUDY IN A
7 MANNER THAT DOES NOT PERMIT ACCESS TO THE PERSONALLY
8 IDENTIFIABLE DATA OF PARENTS AND STUDENTS BY ANYONE OTHER THAN
9 REPRESENTATIVES OF THE ORGANIZATION WITH LEGITIMATE INTERESTS;
10 AND

11 (IV) REQUIRE THE ORGANIZATION TO DESTROY ALL PERSONALLY
12 IDENTIFIABLE INFORMATION WHEN THE INFORMATION IS NO LONGER
13 NEEDED FOR THE PURPOSES FOR WHICH THE STUDY WAS CONDUCTED AND
14 TO SPECIFY THE TIME PERIOD IN WHICH THE INFORMATION MUST BE
15 DESTROYED;

16 (g) DEVELOP REQUIREMENTS THAT ANY DEPARTMENT CONTRACTS
17 THAT AFFECT DATABASES, ASSESSMENTS, OR INSTRUCTIONAL SUPPORTS
18 THAT INCLUDE STUDENT OR PERSONALLY IDENTIFIABLE DATA AND ARE
19 OUTSOURCED TO PRIVATE VENDORS INCLUDE EXPRESS PROVISIONS THAT
20 SAFEGUARD PRIVACY AND SECURITY, INCLUDING SPECIFYING THAT
21 PERSONALLY IDENTIFIABLE DATA MAY ONLY BE USED FOR THE PURPOSE
22 SPECIFIED IN THE CONTRACT AND PROHIBITING FURTHER DISCLOSURE OF
23 THAT DATA OR ITS USE FOR COMMERCIAL PURPOSES, AND INCLUDE
24 PENALTIES FOR NONCOMPLIANCE; AND

25 (h) ADOPT RULES TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

26 (4) THE DEPARTMENT SHALL DEVELOP A PROCESS TO CONSIDER
27 AND REVIEW ALL OUTSIDE REQUESTS FOR STATE DATA, OTHER THAN

1 AGGREGATE STUDENT INFORMATION ALREADY PUBLICLY AVAILABLE, BY
2 INDIVIDUALS NOT EMPLOYED BY THE STATE WHO WISH TO CONDUCT
3 RESEARCH USING STUDENT OR SCHOOL SYSTEM DATA ALREADY
4 COLLECTED BY THE DEPARTMENT.

5 (5) (a) THE DEPARTMENT SHALL NOT REQUIRE A SCHOOL DISTRICT
6 TO PROVIDE ANY DATA THAT IS NOT REQUIRED BY STATE OR FEDERAL LAW;
7 EXCEPT THAT IT MAY REQUIRE DATA NOT MANDATED BY STATE OR
8 FEDERAL LAW THAT IS ASSOCIATED WITH A GRANT PROPOSAL OR A
9 DISTRICT LOCAL EDUCATION AGENCY MAY BE ASKED TO VOLUNTARILY
10 SUBMIT DATA IN ORDER TO RECEIVE A BENEFIT, SUCH AS GRANT FUNDING
11 OR SPECIAL DESIGNATIONS.

12 (b) UNLESS REQUIRED BY STATE OR FEDERAL LAW, THE
13 DEPARTMENT SHALL NOT COLLECT:

- 14 (I) JUVENILE DELINQUENCY RECORDS;
- 15 (II) CRIMINAL RECORDS;
- 16 (III) MEDICAL AND HEALTH RECORDS;
- 17 (IV) STUDENT SOCIAL SECURITY NUMBERS; AND
- 18 (V) STUDENT BIOMETRIC INFORMATION.

19 (c) UNLESS OTHERWISE APPROVED BY THE STATE BOARD, THE
20 DEPARTMENT SHALL NOT TRANSFER STUDENT OR PERSONALLY
21 IDENTIFIABLE DATA TO A FEDERAL, STATE, OR LOCAL AGENCY OR OTHER
22 ENTITY OUTSIDE OF THE STATE, EXCEPT UNDER THE FOLLOWING
23 CIRCUMSTANCES:

24 (I) IF A STUDENT TRANSFERS TO AN EDUCATION ENTITY IN STATE
25 OR OUT OF STATE OR IF A SCHOOL OR SCHOOL DISTRICT SEEKS HELP IN
26 LOCATING A STUDENT WHO TRANSFERS OUT OF STATE;

27 (II) IF A STUDENT SEEKS TO ENROLL IN OR TO ATTEND AN

1 OUT-OF-STATE INSTITUTION OF HIGHER EDUCATION OR TRAINING
2 PROGRAM;

3 (III) IF A STUDENT PARTICIPATES IN A PROGRAM OR ASSESSMENT
4 FOR WHICH SUCH A DATA TRANSFER IS A CONDITION OF PARTICIPATION;

5 (IV) IF A STUDENT IS CLASSIFIED AS "MIGRANT" FOR FEDERAL
6 REPORTING PURPOSES;

7 (V) IF THE DEPARTMENT ENTERS INTO A CONTRACT WITH AN
8 OUT-OF-STATE VENDOR THAT AFFECTS DATABASES, ASSESSMENTS,
9 SPECIAL EDUCATION, OR INSTRUCTIONAL SUPPORT RELATED TO AN AUDIT
10 OR EVALUATION OF FEDERAL- OR STATE-SUPPORTED EDUCATION
11 PROGRAMS, FOR THE ENFORCEMENT OF OR COMPLIANCE WITH FEDERAL
12 LEGAL REQUIREMENTS THAT RELATE TO THOSE PROGRAMS, OR FOR
13 CONDUCTING STUDIES FOR OR ON BEHALF OF THE DEPARTMENT TO
14 DEVELOP, VALIDATE, OR ADMINISTER PREDICTIVE TESTS, ADMINISTER
15 STUDENT AID PROGRAMS, OR IMPROVE INSTRUCTION; OR

16 (VI) IF THE DISCLOSURE IS TO COMPLY WITH A JUDICIAL ORDER OR
17 LAWFULLY ISSUED SUBPOENA OR IN CONNECTION WITH A HEALTH OR
18 SAFETY EMERGENCY.

19 (d) THE DEPARTMENT SHALL NOT SELL, TRADE, GIFT, OR MONETIZE
20 STUDENT DATA FOR COMMERCIAL USE OR INVESTMENT INTERESTS.

21 (6) THE DEPARTMENT SHALL PUBLISH A LIST OF VENDORS THAT
22 THE DEPARTMENT CONTRACTS WITH THAT HOLD STUDENT DATA.

23 (7) THE DEPARTMENT SHALL DEVELOP DATA SECURITY GUIDANCE
24 THAT MAY BE USED BY LOCAL EDUCATION AGENCIES. THE DEPARTMENT'S
25 DATA SECURITY GUIDANCE MUST INCLUDE:

26 (a) GUIDANCE FOR AUTHORIZING ACCESS TO THE STUDENT DATA
27 SYSTEM AND TO INDIVIDUAL STUDENT DATA, INCLUDING GUIDANCE FOR

- 1 AUTHENTICATING AUTHORIZED ACCESS;
- 2 (b) PRIVACY COMPLIANCE STANDARDS;
- 3 (c) PRIVACY AND SECURITY AUDITS;
- 4 (d) SECURITY BREACH PLANNING, NOTICE, AND PROCEDURES;
- 5 (e) DATA RETENTION AND DISPOSITION PROCEDURES;
- 6 (f) DATA COLLECTION AND SHARING PROCEDURES;
- 7 (g) RECOMMENDATIONS THAT ANY CONTRACTS THAT AFFECT
- 8 DATABASES, ASSESSMENTS, OR INSTRUCTIONAL SUPPORTS THAT INCLUDE
- 9 STUDENT OR PERSONALLY IDENTIFIABLE DATA AND ARE OUTSOURCED TO
- 10 PRIVATE VENDORS INCLUDE EXPRESS PROVISIONS THAT SAFEGUARD
- 11 PRIVACY AND SECURITY AND INCLUDE PENALTIES FOR NONCOMPLIANCE;
- 12 (h) BEST SECURITY PRACTICES FOR PRIVACY WHEN USING ON-LINE
- 13 EDUCATION SERVICES, INCLUDING WEB SITES AND APPLICATIONS;
- 14 (i) GUIDANCE FOR CONTRACTS INVOLVING THE OUTSOURCING OF
- 15 EDUCATIONAL SERVICES;
- 16 (j) GUIDANCE FOR CONTRACTS INVOLVING ON-LINE EDUCATION
- 17 SERVICES; AND
- 18 (k) GUIDANCE FOR PUBLISHING A LIST OF VENDORS THAT LOCAL
- 19 EDUCATION AGENCIES CONTRACTS WITH THAT HOLD STUDENT DATA.
- 20 (l) CONSEQUENCES FOR SECURITY BREACHES; AND
- 21 (m) STAFF TRAINING REGARDING THE PROCEDURES.

22 **SECTION 3. Act subject to petition - effective date.** This act

23 takes effect at 12:01 a.m. on the day following the expiration of the

24 ninety-day period after final adjournment of the general assembly (August

25 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a

26 referendum petition is filed pursuant to section 1 (3) of article V of the

27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part will not take effect
2 unless approved by the people at the general election to be held in
3 November 2014 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.