

HB 1262 – AS INTRODUCED

2014 SESSION

14-2312
04/10

HOUSE BILL **1262**

AN ACT relative to student assessment data privacy.

SPONSORS: Rep. Hoell, Merr 23; Rep. Cordelli, Carr 4

COMMITTEE: Education

ANALYSIS

This bill restricts the collection, storage, and sharing of student assessment data by the United States Department of Education and the New Hampshire department of education.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to student assessment data privacy.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Findings and Purpose. The general court finds that:

2 I. Private student information, including the child's name, home address, email address, test
3 scores, racial identity, economic and special education status, and detailed disciplinary and health
4 records, are being stored in databases that could potentially be shared with a variety of government
5 agencies and for-profit corporations, without obtaining parental consent and without any guarantee
6 that the privacy of that information will be protected.

7 II. In 1999, RSA 193-C:10 was adopted requiring that parents have “no fewer rights
8 accorded to them under the Family Educational and Privacy Rights Act (FERPA), 20 U.S.C. 1232g.”

9 III. In 2011, the United States Department of Education changed the FERPA regulations
10 governing the release of student data to the private sector, without congressional authorization and
11 in contradiction to federal statute. These new FERPA regulations:

12 (a) Removed limitations prohibiting educational institutions and agencies from
13 disclosing students’ previously privacy-protected personally identifiable information without first
14 obtaining student or parental consent; and

15 (b) Reinterpreted FERPA statutory terms “authorized representative,” “education
16 program,” and “directory information” to give non-governmental actors increased access to student
17 personal data.

18 IV. In January 2012, the New Hampshire department of education and the federal Office of
19 Science and Technology Policy created the Education Data Initiative to release confidential student
20 data to third-party vendors.

21 V. The Smarter Balanced Assessment Consortia and many other assessment companies
22 have agreed to report fully and often to the United States Department of Education, sharing
23 previously privacy-protected student-level data.

24 VI. Increased safeguards are needed to protect the privacy of student data records.

25 (a) Sharable private student data includes: biological and behavioral data; biometric
26 records, such as: fingerprints, retina and iris patterns, voiceprints, DNA sequences, facial
27 characteristics, handwriting, religious and political affiliation of the family, and medical records.

28 (b) New Hampshire's state longitudinal database system (SLDS) data collection of
29 student records began on April 2, 2012.

30 (c) Parents must have the ability to opt-out of the SLDS which creates digital student
31 portfolios with over 400 data points for each child.

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1 VII. The Unites States Constitution describes the right to privacy: “The right of the people
2 to be secure in their persons, houses, papers, and effects, against unreasonable searches and
3 seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by
4 oath or affirmation, and particularly describing the place to be searched, and the persons or things to
5 be seized.”

6 VIII. Without adequate safeguards, the department of education or school districts may
7 violate the privacy rights of students through the administration of online assessments and surveys
8 or by sharing and distributing student data records.

9 2 Statewide Educational Improvement and Assessment; Accessibility of Assessment Materials.
10 Amend RSA 193-C:10 to read as follows:

11 193-C:10 Accessibility of Assessment Materials.

12 ***I.*** After the assessment results are released by the department, a pupil's parent or legal
13 guardian shall have the right to inspect and review the pupil's assessment booklet, answer or
14 response sheets, surveys, instructions or directions to the pupil, and any other supplemental
15 materials utilized to administer the assessment. A parent or legal guardian shall direct a request for
16 inspection or review to the pupil's school, and the school shall comply with such request within 45
17 days of its receipt. The commissioner shall adopt rules, pursuant to RSA 541-A, to implement
18 procedures for the review and inspection of assessment materials. These rules shall provide parents
19 and legal guardians with no fewer rights accorded to them under the Family Educational and
20 Privacy Rights Act, 20 U.S.C. 1232g.

21 ***II.*** ***No personally identifiable data on students and/or their families' religion,***
22 ***political party affiliation, psychometric data, biometric information, juvenile delinquency***
23 ***records, criminal records, medical, psychological or dental information, birth dates, social***
24 ***security numbers, employment history, income level, and/or voting history shall be***
25 ***collected, tracked, housed, stored, reported or shared with the federal government, nor***
26 ***provided to for-profit corporations.***

27 ***III.*** ***Students who are 18 years of age or older and parents of students under 18***
28 ***years of age shall have the right to inspect and review their student's records and block the***
29 ***transfer or sharing of any or all data contained in such record, including student***
30 ***assessment results, other than for the transfer of such student to another school outside the***
31 ***district.***

32 ***IV.*** ***Districts may elect to grade and score any assessment or survey administered***
33 ***within the district, aggregate student performance data, and share only aggregated***
34 ***student data outside the district to protect student privacy.***

35 ***V.*** ***Districts shall not release any student data where the privacy of student data***
36 ***cannot be guaranteed.***

37 3 Effective Date. This act shall take effect 60 days after its passage.