

114TH CONGRESS  
1ST SESSION

# H. R. 3157

To amend the General Education Provisions Act to strengthen privacy protections for students and parents.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2015

Mr. ROKITA (for himself, Ms. FUDGE, Mr. KLINE, and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the General Education Provisions Act to strengthen privacy protections for students and parents.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Privacy Pro-  
5 tection Act”.

6 **SEC. 2. REFERENCES.**

7 Except as otherwise expressly provided, whenever in  
8 this Act an amendment or repeal is expressed in terms  
9 of an amendment to, or repeal of, a subsection or other  
10 provision, the reference shall be considered to be made to

1 a subsection or other provision of section 444 of the Gen-  
2 eral Education Provisions Act (20 U.S.C. 1232g) (com-  
3 monly known as the “Family Educational Rights and Pri-  
4 vacy Act of 1974”).

5 **SEC. 3. FERPA SHORT TITLE.**

6 Subsection (a) (20 U.S.C. 1232g(a)) is amended to  
7 read as follows:

8 “(a) **SHORT TITLE.**—This section may be cited as the  
9 ‘Family Educational Rights and Privacy Act of 1974’.”.

10 **SEC. 4. REQUIREMENTS.**

11 Such section (20 U.S.C. 1232g) is amended by strik-  
12 ing subsection (b), except for paragraph (1)(J), and in-  
13 serting the following:

14 “(b) **IN GENERAL.**—No funds shall be made available  
15 under any applicable program to any educational agency  
16 or institution, or State educational authority, unless such  
17 agency or institution, or State educational authority, com-  
18 plies with the following requirements:

19 “(1) **PARENTAL ACCESS.**—

20 “(A) **EDUCATIONAL AGENCY OR INSTITU-**  
21 **TION.**—The educational agency or institution  
22 shall not deny or effectively prevent the parents  
23 of students who are or have been in attendance  
24 at a school of such agency or at such institu-  
25 tion, as the case may be, the right to inspect

1 and review the education records of their chil-  
2 dren. If any material or document in the edu-  
3 cation record of a student includes information  
4 on more than one student, a parent shall have  
5 the right to inspect and review only such part  
6 of such material or document that relates to  
7 such parent's child.

8 “(B) APPROPRIATE PROCEDURES.—

9 “(i) IN GENERAL.—The State edu-  
10 cational authority shall establish appro-  
11 priate procedures for the granting of a re-  
12 quest by parents for access to the edu-  
13 cation records of their children who are or  
14 have been in attendance at any educational  
15 agency or institution under the jurisdiction  
16 of the State educational authority.

17 “(ii) REASONABLE RESPONSE TIME.—

18 The educational agency or institution, or  
19 the State educational authority, shall es-  
20 tablish appropriate procedures for the  
21 granting of a request by parents for access  
22 to the education records of their children  
23 within a reasonable period of time, but in  
24 no case more than 30 days after the re-  
25 quest has been received.

1           “(2) RESTRICTIONS ON PARENT AND STUDENT  
2 ACCESS.—

3           “(A) RESTRICTIONS.—The educational  
4 agency or institution shall not make available to  
5 students enrolled in an institution of higher  
6 education the following:

7                   “(i) Financial records of the parents  
8 of the student or any information con-  
9 tained therein.

10                   “(ii) Confidential letters and state-  
11 ments of recommendation, which were  
12 placed in the education records prior to  
13 January 1, 1975, if such letters or state-  
14 ments are not used for purposes other than  
15 those for which they were specifically in-  
16 tended.

17                   “(iii) If the student, while in high  
18 school at any age, has signed a waiver of  
19 the student’s right of access in accordance  
20 with subparagraph (B), confidential rec-  
21 ommendations—

22                           “(I) respecting admission to any  
23 educational agency or institution;

24                           “(II) respecting an application  
25 for employment; and

1                   “(III) respecting the receipt of  
2                   an honor or honorary recognition.

3                   “(B) WAIVER.—

4                   “(i) IN GENERAL.—A student or a  
5                   person applying for admission may waive  
6                   the right to access confidential statements  
7                   described in subparagraph (A)(ii), except  
8                   that such waiver shall apply to rec-  
9                   ommendations only if—

10                   “(I) the student is, upon request,  
11                   notified of the names of all persons  
12                   making confidential recommendations;  
13                   and

14                   “(II) such recommendations are  
15                   used solely for the purposes for which  
16                   they were specifically intended.

17                   “(ii) LIMITATIONS.—A waiver under  
18                   this subparagraph may not be required as  
19                   a condition for admission to, receipt of fi-  
20                   nancial aid from, or receipt of any other  
21                   services or benefits from such agency or in-  
22                   stitution.

23                   “(3) ADJUSTMENTS TO RECORD.—The edu-  
24                   cational agency or institution shall provide parents  
25                   of students who are or have been in attendance at

1 a school of such agency or at such institution an op-  
2 portunity to—

3 “(A) challenge and correct the content of  
4 the education record that the parent believes is  
5 inaccurate or misleading at the time of attend-  
6 ance or otherwise in violation of privacy rights  
7 of students through a hearing by such agency  
8 or institution, in accordance with the regula-  
9 tions of the Secretary; and

10 “(B) insert into such education records a  
11 written explanation of the parents respecting  
12 the content of such records.

13 “(4) DISCLOSURE OF RECORDS WITHOUT PA-  
14 RENTAL CONSENT.—Except as otherwise provided  
15 under subsection (c), the educational agency or insti-  
16 tution shall not permit the disclosure of education  
17 records (or personally identifiable information con-  
18 tained therein) of students without the written con-  
19 sent of their parents to any individual, agency, or  
20 organization.

21 “(5) RECORDKEEPING.—

22 “(A) IN GENERAL.—The educational agen-  
23 cy or institution shall maintain a record, kept  
24 with the education records of each student, in

1 an easy to retrieve and understandable format,  
2 which will indicate—

3 “(i) each individual, agency, or orga-  
4 nization (other than an individual, agency,  
5 or organization specified under subsection  
6 (c)) that has obtained access to a student’s  
7 education record maintained by such edu-  
8 cational agency or institution; and

9 “(ii) specifically the legitimate interest  
10 that each such individual, agency, or orga-  
11 nization has in obtaining such information.

12 “(B) AVAILABILITY OF RECORDS.—Such  
13 record of access shall be available only to par-  
14 ents, to the school officials and their assistants  
15 who are responsible for the custody of such  
16 record of access, and to the Secretary or the  
17 designee of the Secretary, as a means of moni-  
18 toring compliance with this section.

19 “(C) WRITTEN AGREEMENTS.—The edu-  
20 cational agency or institution and the State  
21 educational authority shall maintain a copy of  
22 and make available to parents, upon request,  
23 any written agreements that are required under  
24 this section.

1           “(6) SECURITY PRACTICES.—The educational  
2 agency or institution, and the State educational au-  
3 thority shall—

4           “(A) establish, implement, and enforce  
5 policies and procedures regarding information  
6 security practices that—

7           “(i) serve to protect the education  
8 records (and personally identifiable infor-  
9 mation contained therein) held or main-  
10 tained by that educational agency or insti-  
11 tution, or State educational authority; and

12           “(ii) require any party that is given  
13 access to such education records (or per-  
14 sonally identifiable information contained  
15 therein) on behalf of the educational agen-  
16 cy or institution, or State educational au-  
17 thority, to have information security prac-  
18 tices that serve to protect such records and  
19 information;

20           “(B) designate an official who shall be re-  
21 sponsible for maintaining the security of its  
22 education records; and

23           “(C) establish a breach notification policy  
24 in the case of a breach of the security practices  
25 under subparagraph (A) or the release of the



1 education records or information contained  
2 therein in violation of this section, under which  
3 the educational agency or institution, or State  
4 educational authority—

5 “(i) provides notification of the breach  
6 or violation to parents in not less than 3  
7 days of being made aware of such breach;  
8 and

9 “(ii) works with the third parties in-  
10 volved with such breach or violation to  
11 gather the information necessary to pro-  
12 vide such notification.

13 “(7) DUTY TO INFORM.—The educational agen-  
14 cy or institution shall effectively—

15 “(A) inform the parents of students, or the  
16 students (if such students are 18 years of age  
17 or older, or are attending an institution of high-  
18 er education) of the rights accorded them by  
19 this section; and

20 “(B) inform students of high school age of  
21 the rights of parents and students under this  
22 section, and how those rights transfer from a  
23 parent to a student in accordance with para-  
24 graph (8).

1           “(8) TRANSFER OF RIGHTS.—The educational  
2 agency or institution shall ensure that whenever a  
3 student has attained 18 years of age, or is attending  
4 an institution of higher education, the consent re-  
5 quired of and the rights accorded to the parents of  
6 the student shall thereafter only be required of and  
7 accorded to the student.

8           “(9) ENSURING COMPLIANCE.—The State edu-  
9 cational authority shall—

10           “(A) verify that each educational agency  
11 and institution under its jurisdiction—

12           “(i) has provided the appropriate no-  
13 tices to parents and students required  
14 under this section in an easy-to-understand  
15 format; and

16           “(ii) is in compliance with the require-  
17 ments of this section; and

18           “(B) certify to the Secretary that each  
19 educational agency and institution under its ju-  
20 risdiction is in compliance with the require-  
21 ments of this section.”.

1 **SEC. 5. DISCLOSURE OF RECORDS WITHOUT PARENTAL**  
2 **CONSENT.**

3 (a) IN GENERAL.—Such section (20 U.S.C. 1232g)  
4 is amended by striking subsection (c) and inserting the  
5 following:

6 “(c) DISCLOSURE OF RECORDS WITHOUT PARENTAL  
7 CONSENT.—Notwithstanding subsection (b)(4) and sub-  
8 ject to subsection (h), an educational agency or institution  
9 may permit the disclosure of education records (or person-  
10 ally identifiable information contained therein) of students  
11 without the written consent of their parents to, or for, any  
12 of the following:

13 “(1) Other school officials, including teachers,  
14 within the same educational agency or institution,  
15 who have been determined by such agency or institu-  
16 tion to have legitimate educational interests, includ-  
17 ing the educational interests of the child for whom  
18 consent would otherwise be required.

19 “(2) An education service provider, contractor,  
20 consultant, volunteer, or other party who has been  
21 determined by such educational agency or institution  
22 to have legitimate educational interests and to whom  
23 the educational agency or institution has outsourced  
24 institutional services or functions, provided that—

25 “(A) the party—

1           “(i) performs an institutional service  
2 or function for which the agency or institu-  
3 tion would otherwise use employees;

4           “(ii) is under the direct control of the  
5 educational agency or institution with re-  
6 spect to the use and maintenance of edu-  
7 cation records;

8           “(iii) is in compliance with the re-  
9 quirements of this section relating to the  
10 use and release of personally identifiable  
11 information contained in such education  
12 records; and

13           “(iv) has entered into a written agree-  
14 ment with the educational agency or insti-  
15 tution, subject to the regulations of the  
16 Secretary, that establishes requirements  
17 concerning the protection of the informa-  
18 tion that will be disclosed to the party, in-  
19 cluding—

20           “(I) clear provisions outlining  
21 how and what information from the  
22 education records shall be disclosed to  
23 the party and what personally identifi-  
24 able information the party will create

1 in carrying out the party's duties  
2 under the agreement;

3 “(II) a description of any subcon-  
4 tractor or person acting for the party  
5 in carrying out its duties under the  
6 agreement;

7 “(III) requirements that prohibit  
8 the party from releasing personally  
9 identifiable information to any other  
10 party, except to a subcontractor or  
11 person acting for the party described  
12 in subclause (II);

13 “(IV) clear provisions—

14 “(aa) outlining policies and  
15 practices to ensure that edu-  
16 cation records (including person-  
17 ally identifiable information con-  
18 tained therein) will be secured  
19 using commonly accepted indus-  
20 try standards, by electronic or  
21 physical means by such party;  
22 and

23 “(bb) which stipulate that  
24 such means will secure such  
25 records and information from un-

1 authorized access and that such  
2 policies and practices will be fol-  
3 lowed;

4 “(V) the penalties for a security  
5 breach in violation of the agreement;  
6 and

7 “(VI) provisions that specify the  
8 acceptable uses by such party of the  
9 personally identifiable information in  
10 compliance with this section; and

11 “(B) the educational agency or institu-  
12 tion—

13 “(i) notifies parents and students of  
14 the policies and means the party uses,  
15 without disclosing the specific policies or  
16 means used, to protect the security of per-  
17 sonally identifiable information maintained  
18 by the party; and

19 “(ii) ensures that—

20 “(I) any education records that  
21 are held by the party shall, at a min-  
22 imum, be handled and stored in a  
23 manner that meets the commonly ac-  
24 cepted industry standards on privacy  
25 protection; and

1                   “(II) upon request, a parent is  
2                   provided access by the educational  
3                   agency or institution to the personally  
4                   identifiable information held about  
5                   their children by the party to the  
6                   same extent and in the same manner  
7                   as such access is provided in sub-  
8                   section (b)(1).

9                   “(3) The disclosure of directory information, as  
10                  so designated by the educational agency or institu-  
11                  tion under this paragraph, provided that the edu-  
12                  cational agency or institution which the student at-  
13                  tends—

14                  “(A) has implemented a directory informa-  
15                  tion policy, which may include a directory infor-  
16                  mation policy limiting the parties to or purposes  
17                  for which directory information may be dis-  
18                  closed;

19                  “(B) has given public notice, including an  
20                  easy-to-understand notice to parents of stu-  
21                  dents, of—

22                  “(i) the categories of information  
23                  which the agency or institution has des-  
24                  ignated as directory information with re-

1           spect to students attending the institution  
2           or agency; and

3                   “(ii) the right of a parent to opt out  
4           of allowing their child’s information to be  
5           disclosed as directory information; and

6                   “(C) has allowed a reasonable period of  
7           time after such notice has been given under  
8           subparagraph (B), but not less than 15 school  
9           days, for a parent to inform the institution or  
10          agency that any or all of the information des-  
11          ignated as directory information shall not be  
12          disclosed without the parent’s prior consent.

13                  “(4) Officials of another educational agency or  
14          institution in which the student seeks or intends to  
15          enroll, upon condition that the student’s parents be  
16          notified of the transfer, receive a copy of the edu-  
17          cation record if desired, and have an opportunity for  
18          a hearing to challenge the content of the record.

19                  “(5)(A) An official listed in subparagraph (B)  
20          or an authorized representative working for, or on  
21          behalf of, such official, subject to the limitations de-  
22          scribed in this paragraph and subsection (m)(1)(B),  
23          and only in connection with and to the extent nec-  
24          essary for—



1           “(i) the audit, evaluation, or enforcement  
2 of local, State, or Federal law;

3           “(ii) the audit or evaluation of locally sup-  
4 ported, State-supported, or federally supported  
5 education programs pursuant to local, State, or  
6 Federal law; or

7           “(iii) the enforcement of the Federal or  
8 State legal requirements which relate to the  
9 programs described in clause (ii).

10          “(B) The following officials are covered by this  
11 paragraph:

12           “(i) The Comptroller of the United States.

13           “(ii) The Secretary.

14           “(iii) State or local educational authorities.

15           “(iv) The Attorney General.

16          “(C) Any data collected by an official listed in  
17 subparagraph (B) shall be protected in a manner  
18 that will not permit the personal identification of  
19 students and their parents by other than such offi-  
20 cial, and such education records and personally iden-  
21 tifiable information in such records shall be de-  
22 stroyed when no longer needed for the audit, evalua-  
23 tion, and enforcement of legal requirements de-  
24 scribed in clause (i), (ii), or (iii) of subparagraph  
25 (A).

1           “(6) Organizations conducting a study for, or  
2           on behalf of, an educational agency or institution,  
3           provided that—

4                   “(A) such study is conducted in such a  
5                   manner as will not permit the personal identi-  
6                   fication of students and their parents by per-  
7                   sons other than representatives of such organi-  
8                   zations and such personally identifiable infor-  
9                   mation will be destroyed when no longer needed  
10                  for the purpose of the study;

11                  “(B) the organization has agreed to and  
12                  has appropriate security that meets the infor-  
13                  mation security requirements of subparagraphs  
14                  (A) and (C) of subsection (b)(6); and

15                  “(C) the purpose of the study is limited to  
16                  improving the academic outcomes of students  
17                  attending that educational agency or institu-  
18                  tion.

19           “(7) Officials in connection with a student’s ap-  
20           plication for, or receipt of, financial aid.

21           “(8) State and local officials or authorities to  
22           whom personally identifiable information in edu-  
23           cation records is specifically allowed to be reported  
24           or disclosed pursuant to a State statute regarding  
25           the juvenile justice system.

1           “(9) The Secretary of Agriculture, or the des-  
2           ignee of the Secretary from the Food and Nutrition  
3           Service acting on behalf of the Food and Nutrition  
4           Service, for the purposes of conducting program  
5           monitoring, evaluations, and performance measure-  
6           ments of State and local educational and other agen-  
7           cies and institutions receiving funding or providing  
8           benefits of 1 or more programs authorized under the  
9           Richard B. Russell National School Lunch Act (42  
10          U.S.C. 1751 et seq.) or the Child Nutrition Act of  
11          1966 (42 U.S.C. 1771 et seq.) for which the results  
12          will be reported in an aggregate form that does not  
13          identify any individual, on the conditions that—

14                 “(A) any data collected under this para-  
15                 graph shall be protected in a manner that will  
16                 not permit the personal identification of stu-  
17                 dents and their parents by anyone other than  
18                 the Secretary of Agriculture or the designee of  
19                 such Secretary;

20                 “(B) any personally identifiable informa-  
21                 tion shall be destroyed when the information is  
22                 no longer needed for program monitoring, eval-  
23                 uations, or performance measurements; and

24                 “(C) the parents of the student have been  
25                 notified that the student’s education records

1           will be disclosed for the purposes described in  
2           this paragraph.

3           “(10) Accrediting organizations in order to  
4           carry out their accrediting functions.

5           “(11) Parents of a dependent student of such  
6           parents, as defined in section 152 of the Internal  
7           Revenue Code of 1986.

8           “(12) In connection with an emergency, appro-  
9           priate persons if the knowledge of such information  
10          is necessary to protect the health or safety of the  
11          student or other persons.

12          “(13) Teachers and school officials who have le-  
13          gitimate educational interest in the behavior of the  
14          student, including teachers and school officials in  
15          another educational agency or institution who need  
16          to know information in the education record of a  
17          student to protect the safety of their students, if the  
18          information concerns disciplinary action taken  
19          against a student for conduct that posed a signifi-  
20          cant risk to the safety or well-being of that student,  
21          other students, or other members of the educational  
22          agency or institution community.

23          “(14)(A) An agency caseworker or other rep-  
24          resentative of a State or local child welfare agency,  
25          or tribal organization (as defined in section 4 of the

1 Indian Self-Determination and Education Assistance  
2 Act (25 U.S.C. 450b)), who has the right to access  
3 a foster youth’s case plan (as defined and deter-  
4 mined by the State or tribal organization), when  
5 such agency or organization is legally responsible (in  
6 accordance with State or tribal law), for the care  
7 and protection of the student in foster care place-  
8 ment, provided that the education records, or the  
9 personally identifiable information contained in such  
10 records, of the student will not be released by such  
11 agency or organization, except to an individual or  
12 entity engaged in addressing the student’s education  
13 needs and authorized by such agency or organization  
14 to receive such disclosure, and such disclosure is  
15 consistent with the State or tribal laws applicable to  
16 protecting the confidentiality of a student’s edu-  
17 cation records.

18 “(B) Nothing in this paragraph shall prevent a  
19 State from further limiting the number or type of  
20 State or local officials who will continue to have ac-  
21 cess under this paragraph.”.

22 (b) TRANSFER AND REDESIGNATIONS.—(1) Sub-  
23 section (b)(1) (20 U.S.C. 1232g(b)(1)) is amended by  
24 moving subparagraph (J) so that it appears at the end  
25 of subsection (c) (as so amended).

1           (2) Subparagraph (J) of subsection (c) (20 U.S.C.  
2 1232g(c)), as amended by paragraph (1), is further  
3 amended—

4           (A) by striking “(J)(i)” and inserting “(15)”;  
5           and

6           (B) by striking “(ii)” and inserting “(16)”.

7 **SEC. 6. DISCLOSURE OF RECORDS FOR COLLEGE ADMIS-**  
8 **SIONS, CREDIT, AND AID.**

9           Subsection (d) (20 U.S.C. 1232g(d)) is amended to  
10 read as follows:

11           “(d) DISCLOSURE OF RECORDS FOR COLLEGE AD-  
12 MISSIONS, CREDIT, AND AID.—

13           “(1) IN GENERAL.—Records, files, documents,  
14 information, or other materials that are collected  
15 during or based on the administration of an exam-  
16 ination that meets the requirements of paragraph  
17 (2) may be used or released by the developer of such  
18 examination, provided that—

19           “(A) such developer is not an educational  
20 agency or institution or State educational au-  
21 thority; and

22           “(B) such records, files, documents, infor-  
23 mation, or other materials are released by such  
24 developer solely for the purposes of college ad-  
25 missions, college placement, college academic

1 credit, or college scholarships to any entity eli-  
2 gible to receive funds under title IV of the  
3 Higher Education Act of 1965 (20 U.S.C. 1070  
4 et seq.) or any entity that has a legitimate in-  
5 terest in such records, files, documents, infor-  
6 mation, or other materials to award scholar-  
7 ships to a student for attendance at an institu-  
8 tion of higher education.

9 “(2) EXAMINATION.—An examination covered  
10 under paragraph (1) is an examination that—

11 “(A) may culminate in academic credit  
12 that is widely accepted by institutions of higher  
13 education;

14 “(B) is norm-referenced and used for col-  
15 lege admissions or scholarship purposes; or

16 “(C) is administered by institutions of  
17 higher education for purposes of college place-  
18 ment.”.

19 **SEC. 7. RULES OF CONSTRUCTION.**

20 Subsection (e) (20 U.S.C. 1232g(e)) is amended to  
21 read as follows:

22 “(e) RULES OF CONSTRUCTION.—

23 “(1) DISCIPLINARY PROCEEDINGS.—

1           “(A) IN GENERAL.—Nothing in this sec-  
2 tion shall be construed to prohibit an institution  
3 of higher education from disclosing—

4                   “(i) to an alleged victim of any crime  
5 of violence (as that term is defined in sec-  
6 tion 26 of title 18, United States Code), or  
7 a nonforcible sex offense, the final results  
8 of any disciplinary proceeding conducted  
9 by such institution against the alleged per-  
10 petrator of such crime or offense with re-  
11 spect to such crime or offense; or

12                   “(ii) the final results of any discipli-  
13 nary proceeding conducted by such institu-  
14 tion against a student who is an alleged  
15 perpetrator of any crime of violence (as  
16 that term is defined in section 16 of title  
17 18, United States Code), or a nonforcible  
18 sex offense, if the institution determines as  
19 a result of that disciplinary proceeding  
20 that the student committed a violation of  
21 the institution’s rules or policies with re-  
22 spect to such crime or offense.

23           “(B) DEFINITION.—For the purpose of  
24 this paragraph, the final results of any discipli-  
25 nary proceeding—



1           “(i) shall include only the name of the  
2           student, the violation committed, and any  
3           sanction imposed by the institution on that  
4           student; and

5           “(ii) may include the name of any  
6           other student, such as a victim or witness,  
7           only with the written consent of that other  
8           student.

9           “(2) DRUG AND ALCOHOL DISCLOSURES.—

10           “(A) IN GENERAL.—Nothing in this Act or  
11           the Higher Education Act of 1965 shall be con-  
12           strued to prohibit an institution of higher edu-  
13           cation from disclosing, to a parent or legal  
14           guardian of a student, information regarding  
15           any violation of any Federal, State, or local law,  
16           or of any rule or policy of the institution, gov-  
17           erning the use or possession of alcohol or a con-  
18           trolled substance, regardless of whether that in-  
19           formation is contained in the student’s edu-  
20           cation records, if—

21           “(i) the student is under the age of  
22           21; and

23           “(ii) the institution determines that  
24           the student has committed a disciplinary

1 violation with respect to such use or pos-  
2 session.

3 “(B) STATE LAW REGARDING DISCLO-  
4 SURE.—Nothing in this paragraph shall be con-  
5 strued to supersede any provision of State law  
6 that prohibits an institution of higher education  
7 from making the disclosure described in sub-  
8 paragraph (A).

9 “(3) ADAM WALSH CHILD PROTECTION AND  
10 SAFETY ACT OF 2006.—

11 “(A) IN GENERAL.—Nothing in this Act  
12 shall be construed to prohibit an educational  
13 agency or institution from disclosing informa-  
14 tion provided to the agency or institution under  
15 the Adam Walsh Child Protection and Safety  
16 Act of 2006 (42 U.S.C. 16901 et seq.).

17 “(B) NOTIFICATION.—The Secretary shall  
18 take appropriate steps to notify educational  
19 agencies and institutions that disclosure of in-  
20 formation described in subparagraph (A) is per-  
21 mitted.”.

22 **SEC. 8. OTHER DISCLOSURES.**

23 Such section (20 U.S.C. 1232g) is further amend-  
24 ed—

25 (1) by striking subsection (f); and

1           (2) by redesignating subsection (j) as sub-  
2           section (f).

3 **SEC. 9. MARKETING AND ADVERTISING BAN.**

4           Subsection (g) (20 U.S.C. 1232g(g)) is amended to  
5 read as follows:

6           “(g) **MARKETING AND ADVERTISING BAN.**—

7           “(1) **GENERAL PROHIBITION.**—No person with  
8           access to an education record or a student’s person-  
9           ally identifiable information contained in the edu-  
10          cation record shall market or otherwise advertise di-  
11          rectly to students with the use of the information  
12          gained through access to such record or information.

13          “(2) **PROHIBITIONS RELATING TO EDUCATION**  
14          **SERVICE PROVIDERS.**—Subject to paragraph (3), an  
15          educational agency or institution or State edu-  
16          cational authority shall not contract or enter into an  
17          agreement with an education service provider that  
18          has a policy or practice of using, releasing, or other-  
19          wise providing access to personally identifiable infor-  
20          mation in the education record of a student—

21                  “(A) to advertise or market a product or  
22                  service; or

23                  “(B) for the development of commercial  
24                  products or services.

1           “(3) EXCEPTIONS.—The prohibitions described  
2           in paragraph (2) shall not apply with respect to—

3                   “(A) official school pictures, class rings,  
4                   yearbooks, or other traditional school-san-  
5                   ctioned commemorative products, events, or ac-  
6                   tivities;

7                   “(B) personally identifiable information  
8                   which may be used by an education service pro-  
9                   vider to develop, diagnose, or deliver services to  
10                  improve a student’s academic outcomes or to  
11                  assist an educational agency or institution to  
12                  develop, diagnose, or deliver services to improve  
13                  a student’s academic outcomes;

14                  “(C) an educational agency or institution  
15                  or State educational authority sharing informa-  
16                  tion on educational opportunities offered by  
17                  such agency, institution, or authority; or

18                  “(D) in a case in which the parent of a  
19                  student at an educational agency or institution  
20                  has provided written consent for an educational  
21                  service provider described in paragraph (2) to  
22                  carry out the activities described in such para-  
23                  graph with the personally identifiable informa-  
24                  tion contained in such student’s education  
25                  record.”.

1 **SEC. 10. GENERAL RULES ON DISCLOSURE OR RELEASE OF**  
2 **INFORMATION.**

3 Subsection (h) (20 U.S.C. 1232g(h)) is amended to  
4 read as follows:

5 “(h) GENERAL RULES ON DISCLOSURE OR RELEASE  
6 OF INFORMATION.—

7 “(1) IN GENERAL.—A disclosure or release of  
8 education records or personally identifiable informa-  
9 tion in such records under this section shall be lim-  
10 ited to records or information determined by the ap-  
11 propriate educational agency or institution or State  
12 educational authority to be necessary to meet the  
13 specific conditions of the permitted disclosures listed  
14 under subsection (c).

15 “(2) STATE OR LOCAL LAWS.—A State or local  
16 law may further restrict the permitted disclosures or  
17 release of information under subsection (c) or pro-  
18 vide additional rights to parents with respect to the  
19 disclosure of education records (or the personally  
20 identifiable information contained therein).”.

21 **SEC. 11. ENFORCEMENT.**

22 Subsection (i) (20 U.S.C. 1232g(i)) is amended to  
23 read as follows:

24 “(i) ENFORCEMENT.—

25 “(1) IN GENERAL.—The Secretary shall take  
26 appropriate actions to enforce this section and to ad-

1 dress violations of this section, in accordance with  
2 this Act, except that action to terminate assistance  
3 may be taken only if the Secretary finds there has  
4 been a failure to comply with this section, and the  
5 Secretary has determined that compliance cannot be  
6 secured by voluntary means.

7 “(2) FINES.—

8 “(A) EDUCATIONAL AGENCIES AND INSTI-  
9 TUTIONS.—The Secretary may impose, on an  
10 educational agency or institution, or State edu-  
11 cational authority, for failure to voluntarily  
12 comply with this section or for a substantial  
13 violation of this section (which may include a  
14 single violation), a fine equal to a minimum of  
15 \$100 and a maximum of \$1,500,000, depending  
16 on the severity of the violation, except in no  
17 case may such a fine exceed 10 percent of the  
18 annual budget of such agency or institution, or  
19 authority.

20 “(B) OTHER PARTIES.—With respect to a  
21 release of an education record or personally  
22 identifiable information contained therein,  
23 which was made by a party that is not subject  
24 to a fine under subparagraph (A), and which  
25 violates this section because the release was

1 made without the parental consent required  
2 under this section, or in violation of a written  
3 agreement entered into under this section or  
4 another provision of this section, the Secretary  
5 shall—

6 “(i) refer such violation, and the sup-  
7 porting material for such violation, to the  
8 Commissioner of the Federal Trade Com-  
9 mission or the Attorney General for action;  
10 and

11 “(ii) require the educational agency or  
12 institution, or local educational agency or  
13 State educational authority involved to  
14 prohibit access to such personally identifi-  
15 able information by such party (or individ-  
16 uals who worked for or with such party at  
17 the time of such violation) for a period of  
18 not less than 5, and not more than 12  
19 years, as determined by the Secretary.

20 “(3) DISTRIBUTION OF CERTAIN MONETARY  
21 PENALTIES COLLECTED.—Any monetary penalty or  
22 settlement collected under this subsection with re-  
23 spect to an offense punishable under this section  
24 shall be transferred to the Secretary to be used for  
25 the purposes of providing technical assistance on pri-

1 vacy and security and enforcing the provisions of  
2 this section.”.

3 **SEC. 12. COMPLIANCE OFFICE.**

4 Such section (20 U.S.C. 1232g) is further amended  
5 by adding at the end the following:

6 “(j) COMPLIANCE OFFICE.—

7 “(1) IN GENERAL.—The Secretary shall estab-  
8 lish or designate an office within the Department for  
9 the purpose of investigating, processing, reviewing,  
10 and adjudicating violations of this section and inves-  
11 tigating, processing, reviewing, and adjudicating  
12 complaints which may be filed concerning alleged  
13 violations of this section. This office shall be the of-  
14 ficial office within the Department to address pri-  
15 vacy concerns in student education records.

16 “(2) REGIONAL OFFICES.—Except for the con-  
17 duct of hearings, none of the functions of the Sec-  
18 retary under this section shall be carried out in any  
19 of the regional offices of such Department.”.

20 **SEC. 13. PROHIBITION ON DATA GATHERING.**

21 Such section (20 U.S.C. 1232g) (as amended by sec-  
22 tion 12) is further amended by adding at the end the fol-  
23 lowing:

24 “(k) PROHIBITION ON DATA GATHERING.—No sur-  
25 vey or data-gathering activities shall be conducted by the



1 Secretary, or an administrative head of an education agen-  
2 cy under an applicable program, unless such activities are  
3 authorized by Federal law.”.

4 **SEC. 14. REGULATIONS.**

5 Such section (20 U.S.C. 1232g) (as amended by sec-  
6 tion 13) is further amended by adding at the end the fol-  
7 lowing:

8 “(1) REGULATIONS.—

9 “(1) IN GENERAL.—The Secretary, in accord-  
10 ance with this section and section 446, shall adopt  
11 appropriate regulations or procedures or identify ex-  
12 isting regulations or procedures, which protect the  
13 rights of privacy of students and their families in  
14 connection with any surveys or data-gathering activi-  
15 ties conducted, assisted, or authorized by the Sec-  
16 retary or an administrative head of an education  
17 agency and ensure that parents are aware of their  
18 rights under those sections.

19 “(2) CONTENTS.—Regulations established  
20 under this subsection shall include provisions con-  
21 trolling the use, dissemination, and protection of  
22 such data.”.

1 **SEC. 15. DEFINITIONS.**

2       Such section (20 U.S.C. 1232g) (as amended by sec-  
3 tion 14) is further amended by adding at the end the fol-  
4 lowing:

5       “(m) DEFINITIONS.—For purposes of this section:

6           “(1) AUTHORIZED REPRESENTATIVE.—

7               “(A) IN GENERAL.—The term ‘authorized  
8 representative’ means any individual, agency, or  
9 organization—

10                   “(i) who is an employee or contractor  
11 designated by an official listed in sub-  
12 section (c)(5)(B) to conduct an activity de-  
13 scribed in clause (i), (ii), or (iii) of sub-  
14 section (c)(5)(A); and

15                   “(ii) who is under the direct control of  
16 an official listed in subsection (c)(5)(B)  
17 with respect to the use and maintenance of  
18 education records.

19           “(B) LIMITATION ON RELEASE OF INFOR-  
20 MATION.—An authorized representative shall  
21 not release to any individual, agency, or organi-  
22 zation, any education records or personally  
23 identifiable information of a student collected  
24 while serving as an authorized representative,  
25 except that an authorized representative may  
26 release such records or such information in a

1 case in which the authorized representative is in  
2 compliance with information security require-  
3 ments of subparagraphs (A) and (C) of sub-  
4 section (b)(6), and such representative—

5 “(i) has written consent from the stu-  
6 dent’s parents specifying the education  
7 records to be released;

8 “(ii) releases such records or informa-  
9 tion to the official under whom the author-  
10 ized representative is an employee or con-  
11 tractor; or

12 “(iii) releases such records or infor-  
13 mation—

14 “(I) in compliance with the pub-  
15 lically available, written agreement  
16 specifying the terms of such release  
17 and permitting such release without  
18 the written consent of the student’s  
19 parents; and

20 “(II) under the approval of the  
21 official under whom such representa-  
22 tive is working as an employee or con-  
23 tractor.

24 “(2) DIRECTORY INFORMATION.—The term ‘di-  
25 rectory information’ includes, with respect to a stu-

1       dent, the student’s name, address, telephone listing,  
2       electronic mail address, date and place of birth,  
3       major field of study, grade level, and enrollment sta-  
4       tus in higher education, dates of attendance, partici-  
5       pation in officially recognized activities and sports,  
6       weight and height (if the student is a member of an  
7       athletic team for an official game program or roster  
8       at an educational agency or institution), dates of at-  
9       tendance, degrees, honors and awards received, and  
10      the name of the educational agency or institution  
11      most recently attended by the student.

12           “(3) EDUCATIONAL AGENCY OR INSTITUTION.—  
13      The term ‘educational agency or institution’ means  
14      any public or private elementary school or secondary  
15      school, local educational agency, or institution of  
16      higher education, which is—

17           “(A) principally engaged in the provision  
18      of education, including early childhood edu-  
19      cation, to students; and

20           “(B) the recipient of funds under an appli-  
21      cable program.

22           “(4) EDUCATION RECORDS.—

23           “(A) IN GENERAL.—Except as provided in  
24      subparagraph (B), the term ‘education records’  
25      means those records, files, documents, and

1 other materials which contain information di-  
2 rectly related to a student and are—

3 “(i) maintained, electronically,  
4 digitally, or physically, by an educational  
5 agency or institution, or by a person acting  
6 for such agency or institution;

7 “(ii) accessible, collected, used, or  
8 maintained by a party described in sub-  
9 section (c)(2) in the course of providing  
10 services to a school official; or

11 “(iii) created by or for a State edu-  
12 cational authority, without regard to  
13 whether the student who attends a school  
14 subject to this section attends a school  
15 under the jurisdiction of such State edu-  
16 cational authority.

17 “(B) LIMITATIONS.—The term ‘education  
18 records’ does not include—

19 “(i) records of instructional, super-  
20 visory, and administrative personnel and  
21 educational personnel ancillary thereto  
22 which are not created in conjunction with  
23 the student and are in the sole possession  
24 of the maker thereof and which are not ac-  
25 cessible or revealed to any other person;

1           “(ii) records maintained by a law en-  
2           forcement unit of the educational agency  
3           or institution that were created by that law  
4           enforcement unit for the purpose of law  
5           enforcement;

6           “(iii) in the case of persons who are  
7           employed by an educational agency or in-  
8           stitution but who are not in attendance at  
9           such agency or institution, records made  
10          and maintained in the normal course of  
11          business which relate exclusively to such  
12          person in that person’s capacity as an em-  
13          ployee and are not available for use for any  
14          other purpose; or

15          “(iv) records on a student who is 18  
16          years of age or older, or is attending an in-  
17          stitution of higher education, which are  
18          made or maintained by a physician, psy-  
19          chiatrist, psychologist, or other recognized  
20          professional or paraprofessional acting in  
21          his professional or paraprofessional capac-  
22          ity, or assisting in that capacity, and which  
23          are made, maintained, or used only in con-  
24          nection with the provision of treatment to  
25          the student, and are not available to any-

1           one other than the student (if showing the  
2           student the records would not be detri-  
3           mental to the student or others) or persons  
4           providing such treatment, except that such  
5           records can be personally reviewed by a  
6           physician or other appropriate professional  
7           of the student’s choice.

8           “(C) MAINTAIN.—The term ‘maintain’  
9           when used with respect to an education record,  
10          means keeping, retaining, conserving, or pre-  
11          serving such education record, in any manner,  
12          whether physically, electronically or digitally,  
13          for any non-trivial length of time, except that  
14          student tests and papers that are peer-graded  
15          are not maintained until such tests or papers  
16          are turned into or collected by the teacher or  
17          other school official involved.

18          “(5) EDUCATION SERVICE PROVIDER.—The  
19          term ‘education service provider’ means any pro-  
20          vider, other than a school official or employee, of  
21          services developed and targeted to students for an  
22          educational purpose, whether specifically marketed  
23          to schools, institutions of higher education, edu-  
24          cational agency or institution employees or officers,

1 or other individuals primarily engaged in the provi-  
2 sion of education services.

3 “(6) ESEA TERMS.—The terms ‘elementary  
4 school’, ‘secondary school’, and ‘local educational  
5 agency’ have the meanings given such terms in sec-  
6 tion 9101 of the Elementary and Secondary Edu-  
7 cation Act of 1965 (20 U.S.C. 7801).

8 “(7) INSTITUTION OF HIGHER EDUCATION.—  
9 The term ‘institution of higher education’ has the  
10 meaning given the term in section 102 of the Higher  
11 Education Act of 1965 (20 U.S.C. 1002).

12 “(8) PERSONALLY IDENTIFIABLE INFORMA-  
13 TION.—The term ‘personally identifiable informa-  
14 tion’ means—

15 “(A) any information (such as a student’s  
16 name, Social Security number, email address,  
17 or parent’s name), or compilation of informa-  
18 tion, in electronic, digital, or paper form that,  
19 alone or in combination, is linked or linkable to  
20 a specific student that would allow a reasonable  
21 person in the school community, who does not  
22 have personal knowledge of the relevant cir-  
23 cumstances, to identify the student with reason-  
24 able certainty;



1           “(B) biometric information, including any  
2           record of one or more measurable biological or  
3           behavioral characteristics that may be used for  
4           automated recognition of a student, such as fin-  
5           gerprints, retina and iris patterns, voiceprints,  
6           DNA sequence, facial characteristics, and hand-  
7           writing; or

8           “(C) information in an education record  
9           requested by a person who an educational agen-  
10          cy or institution reasonably believes knows the  
11          identity of the student to whom the education  
12          record relates.

13          “(9) STATE EDUCATIONAL AUTHORITY.—The  
14          term ‘State educational authority’ means a State  
15          agency or other entity in charge of the education  
16          programs of a State.

17          “(10) STUDENT.—The term ‘student’ includes  
18          any person with respect to whom an educational  
19          agency or institution maintains education records or  
20          personally identifiable information, but does not in-  
21          clude a person who has not been in attendance at  
22          such agency or institution.”.

1 **SEC. 16. CONFORMING AMENDMENT.**

2 Section 446(a) of the General Education Provisions  
3 Act (20 U.S.C. 1232i(a)) is amended by striking  
4 “444(b)(1)(D)” and inserting “444(c)(7)”.

5 **SEC. 17. FERPA REGULATIONS.**

6 The definition of the terms “early childhood edu-  
7 cation program” and “education program” in section 99.3  
8 of title 34, Code of Federal Regulations, are repealed and  
9 shall have no legal effect.

○