
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 2097
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Urgency: No
Consultant: Lynn Lorber
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Fiscal: Yes

Subject: Pupil records: social security numbers

SUMMARY

This bill prohibits a local educational agency from collecting or soliciting social security numbers or the last four digits of social security numbers from students or their parents.

BACKGROUND

Existing federal law, the Family Educational Rights and Privacy Act (FERPA):

- 1) Generally requires schools to have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:
 - a) School officials with legitimate educational interest.
 - b) Other schools to which a student is transferring.
 - c) Specified officials for audit or evaluation purposes.
 - d) Appropriate parties in connection with financial aid to a student.
 - e) Organizations conducting certain studies for or on behalf of the school.
 - f) Accrediting organizations.
 - g) To comply with a judicial order or lawfully issued subpoena.
 - h) Appropriate officials in cases of health and safety emergencies.
 - i) State and local authorities, within a juvenile justice system, pursuant to specific State law.
- 2) Authorizes schools to disclose, without consent, "directory" information such as a student's name, address, telephone number, and date and place of birth. Existing law requires schools to notify parents and eligible students about directory information and allow them a reasonable amount of time to request that the school not disclose such information. Existing law requires schools to also

notify parents and eligible students annually of their rights under Family Educational Rights and Privacy Act (FERPA). (United States Code, Title 20, § 1232(g), and Code of Federal Regulations, Title 34, Part 99)

Existing state law:

- 1) Authorizes the Superintendent of Public Instruction (SPI), in order to assist the State in evaluating the effectiveness of special education programs, to collect and use social security numbers of individuals with exceptional needs as student identification numbers.
- 2) Prohibits the SPI from disclosing personally identifiable, individual student records to any person, institution, agency, or organization except as authorized by federal law. (Education Code § 56601)
- 3) Prohibits a school district from permitting access to student records to any person without written parental consent or pursuant to a judicial order except as set forth in federal law. Existing law requires access to those particular records relevant to the legitimate educational interests of the requester to be permitted to specified requesters of that information. (EC § 49076)
- 4) Requires local educational agencies to retain individual student records, including a unique student identification number. (EC § 60900)

ANALYSIS

This bill prohibits a local educational agency from collecting or soliciting social security numbers or the last four digits of social security numbers from students or their parents. Specifically, this bill:

- 1) Prohibits a school district, county office of education, or charter school from collecting or soliciting social security numbers or the last four digits of social security numbers from students or their parents, unless otherwise required to do so by state or federal law.
- 2) Authorizes the California Department of Education to additionally prohibit the collection and solicitation of other personally identifiable information, as recommended by the SPI and approved by the State Board of Education.
- 3) Eliminates the authority for the SPI to collect and use social security numbers, associated with students receiving special education or related services.
- 4) States legislative findings and declarations regarding prioritizing student data privacy, and that social security numbers are the single most misused piece of information associated with identity theft.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "In 2012, the Morgan Hill Concerned Parents Association and the Concerned Parents Association files a lawsuit alleging the Department was not ensuring that students with disabilities were being given the appropriate special education services mandated under federal law. As part of the discovery process, the plaintiffs requested access to thousands of data points stored by the Department, many of which contain personally identifiable information (such as social security numbers) of not only students with disabilities, but all children who are attending or who have attended a California school at any time since January 1, 2008. The judge ruled to allow the plaintiffs access to the data, and as a result, the information of 10 million students may be released to the plaintiffs, a parent-run non-profit organization. Due to the amount of opposition the judge received from parents, she ordered that the Department maintain custody of the most sensitive of its databases California Longitudinal Pupil Achievement Data System (CALPADS), while running searches for information requested by the plaintiffs. The court also reiterated that no student's personally identifiable information may be released to plaintiffs unless they demonstrate to the satisfaction of the court that the method to be used to store the sensitive student data is secure."
- 2) ***Morgan Hill case.*** This bill is in response to issues related to *Morgan Hill Concerned Parents Association and Concerned Parents Association vs. California Department of Education*, in which the plaintiffs allege the California Department of Education (CDE) is failing to ensure that special education students are receiving the services to which they are entitled. As part of the discovery process, the plaintiffs have sought access to the records of approximately 10 million special education students. The records are contained in the CALPADS.

On May 5, 2014 the court approved a "discovery protective order" and subsequently approved an "E-discovery Protocol," which identifies and describes the CDE databases that may contain discoverable material and discusses methods by which discovery can proceed while protecting personal identifying information. The E-discovery Protocol identified two options for discovery of data. Option 1 was the transfer of data in CALPADS if and when the plaintiffs establish a secure environment approved by a Special Master. In Option 2, CDE would retain the data but would facilitate the running of searches to meet the plaintiffs' discovery needs.

The ensuing media coverage reported that the court ordered the release of data, resulting in a huge outcry among parents who were concerned about the security of their children's information and the possibility of identity theft. In the midst of this, the CDE posted a Family Educational Rights and Privacy Act (FERPA) notice on its Web site that included an "Objection to Disclosure of Student Information and Records" form for parents to fill out and send to the court. After being inundated with the forms, the court held a special status on February 29, 2016, to discuss the public posting of the FERPA notice, the public's response, and the implications for discovery.

On March 1, 2016, the court eliminated Option 1 and directed the Special Master to proceed with Option 2 and to meet and confer with the parties to recommend further modifications to the E-discovery Protocol. This means that the California Department of Education (CDE) maintains custody of California Longitudinal Pupil Achievement Data System (CALPADs) data, while running searches for information requested by the plaintiffs. The court also reiterated that no student personally identifiable information may be released to the plaintiffs unless and until they demonstrate to the satisfaction of the court that the method to be used to store the sensitive student data is secure. The parties continue to litigate the extent of the disclosure of student data.

- 3) ***Only special education.*** The CDE used social security numbers as identifiers only for students receiving special education as a means to comply with federal requirements to track the postsecondary activities of students (neither postsecondary education nor the workplace uses the unique student identifiers). The CDE indicates, they are currently working to remove social security numbers from the California Special Education Management Information System (CASEMIS), and are in the process of incorporating the data for all students into the CALPADs. The CDE further notes they have already assigned unique student identifiers to all students, including those receiving special education. While the CDE is already complying with the provisions of this bill, the bill also prohibits schools from collecting or soliciting social security numbers or the last four digits of social security numbers.
- 4) ***Fiscal impact.*** According to the Assembly Appropriations Committee, this bill would impose no administrative costs to the CDE to remove social security numbers from their databases and provide new pupil identifiers as these activities are currently underway.

SUPPORT

California State PTA
California Teachers Association
The Arc and United Cerebral Palsy California Collaboration

OPPOSITION

None received.

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