

# HOUSE BILL No. 1243

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-33-7.5.

**Synopsis:** Disclosure of personally identifiable student information. Prohibits access to personally identifiable student information obtained from education records to outside parties without the consent of the student or student's parent except under certain circumstances. Prohibits the commercial use of student information without consent. Sets forth requirements for data repositories of education records. Provides for enforcement by the attorney general and civil penalties for noncompliance.

**Effective:** July 1, 2015.

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January 13, 2015, read first time and referred to Committee on Education.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1243

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A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 20-33-7.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]:  
4 **Chapter 7.5. Access to Student Information**  
5 **Sec. 1. Beginning with the 2015-2016 school year, this chapter**  
6 **applies to the following:**  
7 (1) **A public school, including a charter school.**  
8 (2) **A postsecondary educational institution, including**  
9 **proprietary credit bearing educational institutions, nonprofit**  
10 **colleges and universities, and state educational institutions.**  
11 **Sec. 2. (a) The definitions in this section apply throughout this**  
12 **chapter.**  
13 (b) **The following terms have the same definitions as are found**  
14 **in 34 CFR Part 99.3 in effect on July 1, 2015:**  
15 (1) **Disclosure.**



- 1           **(2) Education program.**  
 2           **(3) Education records.**  
 3           **(4) Eligible student.**  
 4           **(5) Parent.**  
 5           **(6) Party.**  
 6           **(7) Personally identifiable information.**  
 7           **(8) Record.**  
 8           **(9) Student.**  
 9           **(c) "Agency" refers to the state board, the department, or any**  
 10 **other state agency that by statute has access to student records.**  
 11           **(d) "Governing body" refers to the following:**  
 12               **(1) For a school corporation, the governing body (as defined**  
 13 **in IC 20-18-2-5).**  
 14               **(2) For a postsecondary educational institution, the board of**  
 15 **trustees or equivalent policy making body for the institution.**  
 16           **(e) "Institution" refers to any entity set forth in section 1 of this**  
 17 **chapter.**  
 18           **(f) "Outside party" refers to a contractor, consultant, or other**  
 19 **party with whom the state board, the department, or a governing**  
 20 **body has entered into a contract for institutional services or**  
 21 **functions.**  
 22           **Sec. 3. Whenever an audit, evaluation, or compliance or**  
 23 **enforcement activity connected with legal requirements that relate**  
 24 **to a state or locally supported education program:**  
 25               **(1) requires; or**  
 26               **(2) is used as the basis for;**  
 27 **granting access to personally identifiable student information, the**  
 28 **agency or governing body shall designate only a party that is under**  
 29 **the direct control of the agency or governing body to act as an**  
 30 **authorized representative to conduct the audit, evaluation, or**  
 31 **compliance or enforcement activity.**  
 32           **Sec. 4. The agency or a governing body may not disclose**  
 33 **personally identifiable information from the education records of**  
 34 **a student to an outside party without the written consent of an**  
 35 **eligible student or the student's parent unless all the following**  
 36 **conditions are met:**  
 37               **(1) The outside party performs an institutional service or**  
 38 **function for which the agency or governing body would**  
 39 **otherwise use employees.**  
 40               **(2) The outside party is under the direct control of the agency**  
 41 **or institution with respect to the use and maintenance of the**  
 42 **education records.**



- 1 (3) The outside party limits internal access to the education  
2 records to individuals who are determined to have legitimate  
3 educational interests.
- 4 (4) The outside party does not use the education records for  
5 any other purposes than those explicitly set forth in the  
6 contract with the agency or governing body.
- 7 (5) The outside party does not disclose personally identifiable  
8 information to any other party:
- 9 (A) without the prior written consent of the parent or  
10 eligible student; or
- 11 (B) unless required by statute or court order, and the  
12 outside party provides a notice of the disclosure to the  
13 agency or institution that provided the information not  
14 later than the time information is disclosed, unless  
15 providing notice of the disclosure is expressly prohibited  
16 by statute or court order.
- 17 (6) The outside party maintains reasonable administrative,  
18 technical, and physical safeguards to protect the security,  
19 confidentiality, and integrity of personally identifiable student  
20 information in the outside party's custody.
- 21 (7) The outside party uses encryption technology to protect  
22 data while the data is in motion or in the custody of the  
23 outside party from unauthorized disclosure using a  
24 technology or methodology specified by the secretary of the  
25 United States Department of Health and Human Services in  
26 guidance issued under 42 U.S.C. 17932.
- 27 (8) The outside party has sufficient administrative and  
28 technical procedures to monitor continuously the security of  
29 personally identifiable information in the custody of the  
30 outside party.
- 31 (9) The outside party conducts an annual security audit and  
32 provides the results of the audit to each agency or institution  
33 that provided education records.
- 34 (10) The outside party provides the contracting agency or  
35 institution a breach remediation plan acceptable to the agency  
36 or institution before receiving education records.
- 37 (11) The outside party provides all suspected security  
38 breaches to the contracting agency or institution:
- 39 (A) as soon as possible; and
- 40 (B) not later than forty-eight (48) hours after a suspected  
41 breach was known or should have been known exercising  
42 reasonable diligence.



1           **(12) The outside party reports all actual security breaches to**  
 2           **the contracting agency or institution:**

3                 **(A) as soon as possible; and**

4                 **(B) not later than forty-eight (48) hours after an actual**  
 5                 **breach was known or should have been known exercising**  
 6                 **reasonable diligence.**

7           **(13) If a security breach or the unauthorized disclosure of**  
 8           **personally identifiable information occurs, the outside party**  
 9           **pays all costs and liabilities incurred by the contracting**  
 10           **agency or institution related to the breach or disclosure,**  
 11           **including the costs of:**

12                 **(A) responding to inquiries about the breach or disclosure;**

13                 **(B) notifying the subjects of the personally identifiable**  
 14                 **information about the breach or disclosure;**

15                 **(C) mitigating the effects of the breach or disclosure for**  
 16                 **the subjects of the personally identifiable information; and**

17                 **(D) investigating the cause and consequences of the breach**  
 18                 **or disclosure.**

19           **(14) The outside party destroys or returns to the contracting**  
 20           **agency or institution all personally identifiable information**  
 21           **upon request and at the termination of the contract.**

22           **Sec. 5. An agency or a governing body may disclose personally**  
 23           **identifiable information for an education record of a student**  
 24           **without the consent of an eligible student or a parent to a party**  
 25           **conducting studies for, or on behalf of, educational agencies or**  
 26           **institutions to:**

27                 **(1) develop, administer, or validate predictive tests;**

28                 **(2) administer student aid programs; or**

29                 **(3) improve instruction;**

30           **if the party conducting the study meets all the requirements for**  
 31           **contracting set forth under section 4 of this chapter.**

32           **Sec. 6. (a) Before making a nonconsensual disclosure authorized**  
 33           **under section 4 or 5 of this chapter, an agency or a governing body**  
 34           **shall publicly and conspicuously disclose the existence and content**  
 35           **of the agreement or contract under which the agency or institution**  
 36           **intends to disclose personally identifiable information to an outside**  
 37           **party by posting on the Internet web site of the agency or**  
 38           **institution and by electronically notifying the chairpersons of the**  
 39           **education committees of the Indiana house of representatives and**  
 40           **senate.**

41           **(b) The disclosure and notification required under subsection**  
 42           **(a) must include the following information:**



- 1 (1) The name and location of the data repository where any  
 2 personally identifiable information would be maintained by  
 3 the outside party.
- 4 (2) The principal purpose or purposes for which the  
 5 information is intended to be used.
- 6 (3) The categories of individuals whose records would be  
 7 disclosed to the outside party.
- 8 (4) The categories of records maintained by the outside party.
- 9 (5) The expected uses of the records disclosed to the outside  
 10 party.
- 11 (6) The policies and practices of the outside party regarding  
 12 storage, retrievability, access controls, retention, and disposal  
 13 of records.
- 14 (7) The title and business address of the agency, institution, or  
 15 institutional officer who is responsible for the contract or  
 16 agreement, and the name and business address of the outside  
 17 party directly responsible for the education records  
 18 maintained under the contract or agreement.
- 19 (8) The procedures by which an eligible student or a parent  
 20 who requests notification can gain access to any record  
 21 regarding the student that is maintained by the outside party,  
 22 and how the eligible student or parent can contest the  
 23 education record's content.
- 24 (9) The categories of sources of records in the data repository  
 25 containing education records.
- 26 **Sec. 7. (a) Without the written consent of each eligible student  
 27 and parent, an agency or institution may not:**
- 28 (1) facilitate, arrange, contract for, or authorize an outside  
 29 party to collect personally identifiable student information;  
 30 (2) disclose personally identifiable information from  
 31 education records to any party for a commercial use,  
 32 including:
- 33 (A) marketing products or services;  
 34 (B) compiling lists for sale or rental;  
 35 (C) developing products or services; or  
 36 (D) creating individual, household, or group profiles; or
- 37 (3) disclose personally identifiable information for the  
 38 provision of services other than those authorized in sections  
 39 4 and 5 of this chapter.
- 40 **(b) A consent under subsection (a) must:**
- 41 (1) be signed by an eligible student or a parent;  
 42 (2) be dated on the day the consent was signed;



1 (3) not have been signed more than six (6) months before the  
2 disclosure;

3 (4) identify the recipient and the purpose of the disclosure;  
4 and

5 (5) state that the information will only be used for the purpose  
6 stated in subdivision (4) and not be used for any other  
7 purpose.

8 **Sec. 8. (a)** The department and a school corporation may not,  
9 either directly or through contracts with outside parties, maintain  
10 personally identifiable information from education records without  
11 the written consent of an eligible student or a parent unless  
12 maintenance of the information is:

13 (1) explicitly mandated under a federal or state statute;

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

17 (3) designed to support a study of students or former students,  
18 if no personally identifiable information on a student is  
19 retained for more than five (5) years after the date of the  
20 student's last enrollment in the school corporation.

21 (b) The department and a school corporation shall publicly and  
22 conspicuously disclose the existence and character of any  
23 personally identifiable information from education records that the  
24 department or governing body maintains, either directly or  
25 through a contract with an outside party, by posting on the  
26 Internet web site of the department or school corporation and by  
27 electronically notifying the chairpersons of the education  
28 committees of the Indiana house of representatives and senate of  
29 the following information:

30 (1) The name and location of the data repository in which the  
31 information is maintained.

32 (2) The legal authority that authorizes the establishment and  
33 existence of the data repository.

34 (3) The principal purpose or purposes for which the  
35 information is intended to be used.

36 (4) The categories of individuals on whom records are  
37 maintained in the data repository.

38 (5) The categories of records maintained in the data  
39 repository.

40 (6) Each expected disclosure of the records contained in the  
41 data repository, including the categories of recipients and the  
42 purposes of the disclosures.



- 1           **(7) The policies and practices of the department or governing**  
 2           **body regarding storage, retrievability, access control,**  
 3           **retention, and disposal of the records.**
- 4           **(8) The title and business address of the department or school**  
 5           **corporation official responsible for the data repository, and**  
 6           **the name and business address of any outside party**  
 7           **maintaining the data repository on behalf of the department**  
 8           **or school corporation.**
- 9           **(9) The procedures by which an eligible student or a parent**  
 10           **who requests notification can gain access to any record**  
 11           **regarding the student that is maintained in the data**  
 12           **repository, and how the eligible student or parent can contest**  
 13           **the education record's content.**
- 14           **(10) The categories of sources of records in the data**  
 15           **repository.**
- 16           **(c) The department or an institution may not append education**  
 17           **records with personally identifiable information obtained from**  
 18           **other federal or state agencies through data matches without the**  
 19           **written consent of an eligible student or a parent unless a data**  
 20           **match is:**
- 21               **(1) explicitly mandated under a federal or state statute; or**  
 22               **(2) administratively required for the proper performance of**  
 23               **duties under the law, and relevant to and necessary for the**  
 24               **delivery of services.**
- 25           **Sec. 9. (a) This subsection does not apply to an agency or**  
 26           **institution. Each violation of this chapter by an organization or**  
 27           **entity is punishable by a civil penalty of not more than one**  
 28           **thousand dollars (\$1,000). A second violation of this chapter by the**  
 29           **same organization or entity involving the educational records and**  
 30           **privacy of the same student is punishable by a civil penalty of not**  
 31           **more than five thousand dollars (\$5,000). A third or subsequent**  
 32           **violation of this chapter by the same organization or entity**  
 33           **involving the educational records and privacy of the same student**  
 34           **is punishable by a civil penalty of not more than ten thousand**  
 35           **dollars (\$10,000). Each violation involving a different individual**  
 36           **education record or a different individual student is considered a**  
 37           **separate violation for purposes of assessing civil penalties.**
- 38           **(b) The attorney general has the authority to enforce**  
 39           **compliance with this chapter, seek civil penalties for violations of**  
 40           **this chapter, and seek appropriate injunctive relief.**
- 41           **(c) This chapter does not create a private right of action against**  
 42           **the state board, the department, or an institution.**





1       **Sec. 10. This chapter does not limit the administrative use of**  
2       **education records by an individual acting exclusively in the**  
3       **individual's capacity as an employee of a school, a school**  
4       **corporation, the state, a state agency, a political subdivision, a**  
5       **court, or the federal government that is otherwise required by law.**

