

ASSEMBLY BILL NO. 221—ASSEMBLYMAN KIRNER

MARCH 4, 2015

Referred to Committee on Education

SUMMARY—Revises provisions relating to data concerning pupils. (BDR 34-147)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to education; making various changes concerning policies governing data which includes information about pupils that is maintained by the Department of Education; requiring certain contracts that require disclosure of personally identifiable information concerning pupils to include provisions concerning the protection of such information; requiring the Department to adopt a data security plan for collecting, maintaining and transferring data concerning pupils; requiring the annual report of the state of public education to include certain information concerning the collection, maintenance and transfer of data concerning pupils; requiring certain entities to adopt policies concerning data which includes information concerning pupils; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides for an automated system of accountability information
2 for the State of Nevada. (NRS 386.650) **Section 2** of this bill requires the
3 Department of Education to establish, publish and make publicly available on its
4 Internet website: (1) an index of data elements that the Department maintains or
5 proposes to include in the automated system of accountability information for
6 Nevada; (2) an explanation of the index of data elements that must include a
7 description of each data element and the reason for collecting or proposing to
8 collect such an element; and (3) the third-party service providers, organizations and
9 agencies that have access to the data about individual pupils maintained by the
10 Department in this system. **Section 2** also requires the Department to update this
11 information at least once each biennium.



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Existing law requires a public school to comply with federal law governing: (1) access to the education records of a pupil; (2) requesting an amendment or other change to the education records of a pupil; and (3) confidentiality of the education records of a pupil. (NRS 392.029) **Section 3** of this bill requires the Department to adopt any policies and procedures necessary to ensure the privacy of data about pupils which are consistent with relevant state and federal privacy laws. **Section 3** also requires the Department to review these policies and procedures at least once each biennium and revise them as necessary.

Section 4 of this bill requires any contract entered into by the Department, a school district, a sponsor of a charter school or a public school, including, without limitation, a charter school, that provides for the disclosure of data that includes any personally identifiable information of a pupil to include: (1) express provisions to protect the privacy and security of such information; (2) a prohibition on the use of such information for any purpose other than those required or specifically authorized by the contract; (3) a prohibition on selling the information and using the information to market products or services to pupils; and (4) a penalty for intentional or grossly negligent noncompliance with the terms of the contract.

Section 5 of this bill requires the Department, in consultation with each school district and the State Public Charter School Authority, to adopt a detailed plan to provide for the security of data that is collected, maintained and transferred by the Department. **Section 5** also requires the board of trustees of each school district, the governing body of a charter school and the governing body of a university school for profoundly gifted pupils to carry out this plan.

Existing law requires the Department, in conjunction with the State Board of Education, to prepare an annual report of the state of public education in this State. (NRS 385.230) **Section 5** requires each school district, sponsor of a charter school and university school for profoundly gifted pupils to prepare and submit to the Department an annual report concerning any significant changes to the manner in which the school district, charter school or university school for profoundly gifted pupils collects, maintains or transfers data concerning pupils for inclusion in the annual report prepared by the Department. **Section 6** of this bill requires the annual report to include: (1) a description of any significant changes made to the collection, maintenance or transfer of data concerning pupils; and (2) any new data elements proposed for inclusion in the automated system of accountability information for Nevada.

Section 8 of this bill requires the board of trustees of each school district, the governing body of a charter school and the governing body of a university school for profoundly gifted pupils to establish, publish and make publicly available an index of data elements transferred to the automated system of accountability information for Nevada. **Section 8** also requires the board of trustees of each school district, the governing body of a charter school and the governing body of a university school for profoundly gifted pupils to establish, publish and make publicly available a list of third-party service providers, organizations and agencies that have access to such information.

Section 9 of this bill requires the board of trustees of each school district, the governing body of a charter school and the governing body of a university school for profoundly gifted pupils to adopt policies and procedures governing: (1) the use by teachers and other educational personnel of certain software; and (2) the manner in which data concerning pupils may be provided to any person when the provision of such data is not expressly authorized by the board of trustees or the governing body, as applicable.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. 1. *The Department shall establish, publish and make publicly available on its Internet website:*

(a) An index of the data elements that the Department maintains or proposes to include in the automated system of accountability information for Nevada established pursuant to NRS 386.650, including, without limitation:

(1) Data concerning individual pupils; and

(2) Aggregated data concerning pupils within a defined group.

(b) An explanation of the index of data elements established pursuant to paragraph (a), which must include, without limitation:

(1) A description of each data element concerning each individual pupil;

(2) The reason for collecting or proposing to collect each data element concerning each individual pupil; and

(3) The third-party service providers, organizations and agencies that have access to the data concerning individual pupils maintained by the Department in the automated system of accountability information for Nevada established pursuant to NRS 386.650.

2. *At least once each biennium, the Department shall update the information described in subsection 1.*

Sec. 3. 1. *The Department shall adopt any policies and procedures necessary to ensure the privacy of data concerning pupils which are consistent with relevant state and federal privacy laws, including, without limitation, the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto.*

2. *At least once each biennium, the Department shall review and revise as necessary the policies and procedures described in subsection 1.*

Sec. 4. 1. *Any contract entered into by the Department, a school district, a sponsor of a charter school or a public school, including, without limitation, a charter school, that provides for the disclosure of data that includes any personally identifiable information of a pupil must include, without limitation:*

(a) Provisions specifically to protect the privacy and security of the personally identifiable information;



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(b) A prohibition on the use of the personally identifiable information for any purpose other than those required or specifically authorized by the terms of the contract;

(c) A prohibition on selling the personally identifiable information and using the personally identifiable information to market products or services to pupils, except that information which includes only aggregated data concerning pupils may be used to demonstrate the effectiveness of the product or service; and

(d) A penalty for intentional or grossly negligent noncompliance with the terms of the contract, including, without limitation, provisions for termination of the contract and for the payment of monetary damages for any breach of the terms of the contract.

2. As used in this section, "personally identifiable information" has the meaning ascribed to it in 34 C.F.R. § 99.3.

Sec. 5. 1. The Department, in consultation with each school district and the State Public Charter School Authority, shall adopt a detailed plan to provide for the security of any data concerning pupils that is collected, maintained and transferred by the Department.

2. The board of trustees of each school district, the governing body of a charter school and the governing body of a university school for profoundly gifted pupils shall comply with and carry out the data security plan adopted by the Department pursuant to subsection 1.

3. Each school district, sponsor of a charter school and university school for profoundly gifted pupils shall prepare and submit to the Department an annual report concerning any significant changes to the manner in which the school district, charter school or university school for profoundly gifted pupils collects, maintains or transfers data concerning pupils for inclusion in the annual report prepared by the Department pursuant to NRS 385.230.

Sec. 6. NRS 385.230 is hereby amended to read as follows:

385.230 1. The Department shall, in conjunction with the State Board, prepare an annual report of the state of public education in this State. The report must include, without limitation:

(a) An analysis of each annual report of accountability prepared by the State Board pursuant to NRS 385.3572;

(b) An update on the status of K-12 public education in this State;

(c) A description of the most recent vision and mission statements of the State Board and the Department, including,



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1 without limitation, the progress made by the State Board and
2 Department in achieving those visions and missions;

3 (d) A description of the goals and benchmarks for improving the
4 academic achievement of pupils which are included in the plan to
5 improve the achievement of pupils required by NRS 385.3593;

6 (e) *A description of any significant changes made to the
7 collection, maintenance or transfer of data concerning pupils by
8 the Department, a school district, a sponsor of a charter school or
9 a university school for profoundly gifted pupils;*

10 (f) *Any new data elements, including, without limitation, data
11 about individual pupils and aggregated data about pupils within a
12 defined group, proposed for inclusion in the automated system of
13 accountability information for Nevada established pursuant to
14 NRS 386.650;*

15 (g) An analysis of the progress the public schools have made in
16 the previous year toward achieving the goals and benchmarks for
17 improving the academic achievement of pupils;

18 ~~(h)~~ (h) An analysis of whether the standards and examinations
19 adopted by the State Board adequately prepare pupils for success in
20 postsecondary educational institutions and in career and workforce
21 readiness;

22 ~~(i)~~ (i) An analysis of the extent to which school districts and
23 charter schools recruit and retain effective teachers and principals;

24 ~~(j)~~ (j) An analysis of the ability of the automated system of
25 accountability information for Nevada established pursuant to NRS
26 386.650 to link the achievement of pupils to the performance of the
27 individual teachers assigned to those pupils and to the principals of
28 the schools in which the pupils are enrolled;

29 ~~(k)~~ (k) An analysis of the extent to which the lowest
30 performing public schools have improved the academic achievement
31 of pupils enrolled in those schools;

32 ~~(l)~~ (l) A summary of the innovative educational programs
33 implemented by public schools which have demonstrated the ability
34 to improve the academic achievement of pupils, including, without
35 limitation:

36 (1) Pupils who are economically disadvantaged, as defined
37 by the State Board;

38 (2) Pupils from major racial and ethnic groups, as defined by
39 the State Board;

40 (3) Pupils with disabilities;

41 (4) Pupils who are limited English proficient; and

42 (5) Pupils who are migratory children, as defined by the State
43 Board; and

44 ~~(m)~~ (m) A description of any plan of corrective action
45 requested by the Superintendent of Public Instruction from the board



1 of trustees of a school district or the governing body of a charter
2 school and the status of that plan.

3 2. In odd-numbered years, the Superintendent of Public
4 Instruction shall present the report prepared pursuant to subsection 1
5 in person to the Governor and each standing committee of the
6 Legislature with primary jurisdiction over matters relating to K-12
7 public education at the beginning of each regular session of the
8 Legislature.

9 3. In even-numbered years, the Superintendent of Public
10 Instruction shall, on or before January 31, submit a written copy of
11 the report prepared pursuant to subsection 1 to the Governor and to
12 the Legislative Committee on Education.

13 **Sec. 7.** Chapter 386 of NRS is hereby amended by adding
14 thereto the provisions set forth as sections 8 and 9 of this act.

15 **Sec. 8.** *The board of trustees of each school district, the*
16 *governing body of a charter school and the governing body of a*
17 *university school for profoundly gifted pupils shall establish,*
18 *publish and make publicly available:*

19 *1. An index of data elements, including, without limitation,*
20 *data concerning individual pupils and aggregated data concerning*
21 *pupils within a defined group transferred to the automated system*
22 *of accountability information for Nevada established pursuant to*
23 *NRS 386.650; and*

24 *2. A list of the third-party service providers, organizations*
25 *and agencies that have access to data concerning individual pupils*
26 *maintained by the Department in the automated system of*
27 *accountability information for Nevada established pursuant to*
28 *NRS 386.650.*

29 **Sec. 9.** *The board of trustees of each school district, the*
30 *governing body of a charter school and the governing body of a*
31 *university school for profoundly gifted pupils shall adopt policies*
32 *and procedures governing:*

33 *1. The use by teachers and other educational personnel of*
34 *software offered to users free of charge for basic services, but that*
35 *requires users to pay for any additional or premium proprietary*
36 *features, functionality or virtual goods; and*

37 *2. The manner in which data concerning pupils may be*
38 *provided to a person when the provision of such data is not*
39 *expressly authorized by the board of trustees or governing body, as*
40 *applicable.*

41 **Sec. 10.** NRS 218E.625 is hereby amended to read as follows:

42 218E.625 1. The Legislative Bureau of Educational
43 Accountability and Program Evaluation is hereby created within the
44 Fiscal Analysis Division. The Fiscal Analysts shall appoint to the
45 Legislative Bureau of Educational Accountability and Program



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1 Evaluation a Chief and such other personnel as the Fiscal Analysts
2 determine are necessary for the Bureau to carry out its duties
3 pursuant to this section.

4 2. The Bureau shall, as the Fiscal Analysts determine is
5 necessary or at the request of the Committee:

6 (a) Collect and analyze data and issue written reports
7 concerning:

8 (1) The effectiveness of the provisions of NRS 385.3455 to
9 385.3891, inclusive, *and section 2 of this act* in improving the
10 accountability of the schools of this State;

11 (2) The statewide program to reduce the ratio of pupils per
12 class per licensed teacher prescribed in NRS 388.700, 388.710 and
13 388.720;

14 (3) The statewide program to educate persons with
15 disabilities that is set forth in chapter 395 of NRS;

16 (4) The results of the examinations of the National
17 Assessment of Educational Progress that are administered pursuant
18 to NRS 389.012; and

19 (5) Any program or legislative measure, the purpose of
20 which is to reform the system of education within this State.

21 (b) Conduct studies and analyses to evaluate the performance
22 and progress of the system of public education within this State.
23 Such studies and analyses may be conducted:

24 (1) As the Fiscal Analysts determine are necessary; or

25 (2) At the request of the Legislature.

26 ➤ This paragraph does not prohibit the Bureau from contracting
27 with a person or entity to conduct studies and analyses on behalf of
28 the Bureau.

29 (c) On or before October 1 of each even-numbered year, submit
30 a written report of its findings pursuant to paragraphs (a) and (b) to
31 the Director for transmission to the next regular session. The Bureau
32 shall, on or before October 1 of each odd-numbered year, submit a
33 written report of its findings pursuant to paragraphs (a) and (b) to
34 the Director for transmission to the Legislative Commission and to
35 the Legislative Committee on Education.

36 3. The Bureau may, pursuant to NRS 218F.620, require a
37 school, a school district, the Nevada System of Higher Education or
38 the Department of Education to submit to the Bureau books, papers,
39 records and other information that the Chief of the Bureau
40 determines are necessary to carry out the duties of the Bureau
41 pursuant to this section. An entity whom the Bureau requests to
42 produce records or other information shall provide the records or
43 other information in any readily available format specified by the
44 Bureau.



1 4. Except as otherwise provided in this subsection and NRS
2 239.0115, any information obtained by the Bureau pursuant to this
3 section shall be deemed a work product that is confidential pursuant
4 to NRS 218F.150. The Bureau may, at the discretion of the Chief
5 and after submission to the Legislature or Legislative Commission,
6 as appropriate, publish reports of its findings pursuant to paragraphs
7 (a) and (b) of subsection 2.

8 5. This section does not prohibit the Department of Education
9 or the State Board of Education from conducting analyses,
10 submitting reports or otherwise reviewing educational programs in
11 this State.

12 **Sec. 11.** The provisions of section 4 of this act do not apply to
13 any contract entered into before July 1, 2015, until extended or
14 renewed.

15 **Sec. 12.** This act becomes effective on July 1, 2015.

