

SENATE BILL NO. 463—COMMITTEE ON EDUCATION

MARCH 23, 2015

Referred to Committee on Education

SUMMARY—Revises provisions relating to education.
(BDR 34-411)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

CONTAINS UNFUNDED MANDATE (§ 8)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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; requiring certain providers of electronic applications used for educational purposes to provide written disclosures concerning personally identifiable information that is collected; requiring such a provider to allow certain persons to review and correct personally identifiable information about a pupil maintained by the provider; limiting the circumstances under which such a provider may collect, use, allow access to or transfer personally identifiable information concerning a pupil; requiring such a provider to establish and carry out a detailed plan for the security of data concerning pupils; requiring teachers and other licensed personnel employed by a school district or charter school to complete certain professional development; requiring certain disciplinary action against a teacher or administrator for breaches in security or confidentiality of certain examinations; providing a civil penalty for certain violations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1.25** of this bill declares that: (1) the educational records of a pupil,
2 including the personally identifiable information contained in such records, belong
3 to the pupil and his or her parent or legal guardian; and (2) it is the public policy of



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this State to protect such records and information; and (3) the provisions of this bill are intended to provide greater protection over such records and information.

Section 5 of this bill requires a school service provider to provide to the board of trustees of a school district or the governing body of a school, as applicable, and a teacher who uses a school service, a written disclosure of: (1) the types of personally identifiable information collected by the school service provider; (2) the manner in which such information is used; (3) a description of the plan for security of data concerning pupils which has been established by the school service provider; and (4) any material change to such a plan. **Section 3** of this bill defines the term "school service" to mean an Internet website, online service or mobile application that: (1) collects or maintains personally identifiable information concerning a pupil; (2) is used primarily for educational purposes; (3) is designed and marketed for use in public schools; and (4) is used at the direction of teachers and other educational personnel. **Section 5** requires a school service provider to: (1) allow certain pupils or the parent or guardian of a pupil to review personally identifiable information about the pupil maintained by the school service provider; and (2) establish a process for making any corrections to such information.

Section 6 of this bill limits the circumstances under which a school service provider may collect, use, allow access to or transfer personally identifiable information concerning a pupil. **Section 6** requires a school service provider to delete personally identifiable information concerning a pupil at the request of the board of trustees of the school district or the governing body of the school, as applicable. **Section 6** requires any agreement entered into by a school service provider that provides for the disclosure of personally identifiable information to limit the circumstances under which the person or governmental entity to whom the information is disclosed may collect, use or transfer such information to circumstances authorized by law. **Section 6** also subjects any school service provider that violates these requirements to a civil penalty.

Section 7 of this bill requires a school service provider to establish and carry out a detailed plan for the security of any data concerning pupils that is collected or maintained by the school service provider. **Section 8** of this bill requires each school district and the governing body of a charter school or university school for profoundly gifted pupils, as applicable, to annually provide professional development regarding the use of school service providers and the security of data concerning pupils. **Section 8** also requires teachers and other licensed personnel employed by a school district or charter school to annually complete professional development regarding school service providers and the security of data concerning pupils.

Section 8.3 of this bill authorizes a school service provider to use and disclose information derived from personally identifiable information to demonstrate the effectiveness of the products or services of the school service provider. **Section 8.5** of this bill prohibits a person or governmental entity from waiving or modifying any right, obligation or liability provided by the provisions of **sections 1.5-8.5**. **Section 8.5** also provides that any condition, stipulation, or provision in a contract that conflicts with the provisions of **sections 1.5-8.5** is void and unenforceable.

Existing law authorizes a teacher to be suspended, dismissed or not reemployed and an administrator to be demoted, suspended, dismissed or not reemployed for breaches in security or confidentiality of the questions and answers of certain examinations. (NRS 391.3127) **Section 9** of this bill instead requires a teacher to be suspended, dismissed or not reemployed and an administrator to be demoted, suspended, dismissed or not reemployed for such breaches.



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

1 **Section 1.** Chapter 388 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 1.25 to 8.5, inclusive, of
3 this act.

4 **Sec. 1.25.** *The Legislature hereby finds and declares that:*

5 1. *The educational records of a pupil, including, without*
6 *limitation, the personally identifiable information of the pupil,*
7 *belong to the pupil and his or her parent or legal guardian.*

8 2. *It is the public policy of this State to protect such records*
9 *and information.*

10 3. *The provisions of sections 1.5 to 8.5, inclusive, of this act*
11 *are intended to:*

12 (a) *Provide greater protection of such records and*
13 *information;*

14 (b) *Limit and restrict the collection, transfer and maintenance*
15 *of such information;*

16 (c) *Provide greater control of such information to pupils and*
17 *their parents or guardians;*

18 (d) *Provide notification to persons and governmental entities*
19 *regarding the types of personally identifiable information collected*
20 *and how such information is kept secure;*

21 (e) *Establish a process for the correction or deletion of any*
22 *personally identifiable information collected by a school service*
23 *provider;*

24 (f) *Prohibit a school service provider from using personally*
25 *identifiable information to target advertising to minors; and*

26 (g) *Ensure that teachers and other licensed educational*
27 *personnel understand how to use school services in a manner that*
28 *protects personally identifiable information concerning pupils.*

29 **Sec. 1.5.** *As used in sections 1.25 to 8.5, inclusive, of this act,*
30 *unless the context otherwise requires, the words and terms defined*
31 *in sections 2 to 4.5, inclusive, of this act have the meanings*
32 *ascribed to them in those sections.*

33 **Sec. 2.** *“Personally identifiable information” has the*
34 *meaning ascribed to it in 34 C.F.R. § 99.3.*

35 **Sec. 3. 1.** *“School service” means an Internet website,*
36 *online service or mobile application that:*

37 (a) *Collects or maintains personally identifiable information*
38 *concerning a pupil;*

39 (b) *Is used primarily for educational purposes; and*

40 (c) *Is designed and marketed for use in public schools and is*
41 *used at the direction of teachers and other educational personnel.*



2. The term does not include an Internet website, online service or mobile application that is designed or marketed for use by a general audience, even if the school service is also marketed to public schools.

Sec. 4. “School service provider” means a person that operates a school service, to the extent the provider is operating in that capacity.

Sec. 4.5. “Targeted advertising” means presenting advertisements to a pupil where the advertisement is selected based on information obtained or inferred from the online behavior of a pupil, the use of applications by a pupil or personally identifiable information concerning a pupil. The term does not include advertising to a pupil at an online location based upon the current visit to the location by the pupil or a single search query without the collection and retention of the online activities of a pupil over time.

Sec. 5. 1. Before the persons or governmental entities described in subsection 3 begin using a school service, a school service provider must provide a written disclosure to such persons or governmental entities in language that is easy to understand, which includes, without limitation:

(a) The types of personally identifiable information collected by the school service provider and the manner in which such information is used; and

(b) A description of the plan for the security of data concerning pupils which has been established by the school service provider pursuant to section 7 of this act.

2. Before a school service provider makes a material change to the plan for the security of data concerning pupils established pursuant to section 7 of this act, the school service provider must provide notice to the persons or governmental entities set forth in subsection 3.

3. The disclosure or notice provided pursuant to subsection 1 or 2, as applicable, must be provided to:

(a) The board of trustees of a school district, the governing body of a charter school or the governing body of a university school for profoundly gifted pupils, as applicable, that uses the school service of the school service provider; and

(b) Any teacher who uses the school service.

4. A school service provider shall:

(a) Allow a pupil who is at least 13 years of age and the parent or legal guardian of any pupil to review personally identifiable information concerning the pupil that is maintained by the school service provider; and



(b) Establish a process, in accordance with any contract governing the activities of a school service provider and which is consistent with the provisions of sections 1.5 to 8.5, inclusive, of this act, for the correction of such information upon the request of:

(1) A pupil who is at least 13 years of age or the parent or legal guardian of any pupil; or

(2) The teacher of the pupil or the board of trustees of the school district in which the school that the pupil attends is located, the governing body of the charter school that the pupil attends or the governing body of the university school for profoundly gifted pupils that the pupil attends, as applicable.

Sec. 6. 1. Except as otherwise provided in subsection 2, a school service provider may collect, use, allow access to or transfer personally identifiable information concerning a pupil only:

(a) For purposes inherent to the use of a school service by a teacher in a classroom or for the purposes authorized by the board of trustees of the school district in which the school that the pupil attends is located, the governing body of the charter school that the pupil attends or the governing body of the university school for profoundly gifted pupils that the pupil attends, as applicable, so long as it is authorized by federal and state law;

(b) If required by federal or state law;

(c) In response to a subpoena issued by a court of competent jurisdiction;

(d) To protect the safety of a user of the school service; or

(e) With the consent of any person required in a policy of the school district, charter school or university school for profoundly gifted pupils, as applicable, or, if none, with the consent of the pupil, if the pupil is at least 13 years of age, or the parent or legal guardian of the pupil if the parent or legal guardian has requested to provide consent before any such action is taken or if the pupil is less than 13 years of age.

2. A school service provider may transfer personally identifiable information concerning a pupil to a third-party service provider if the school service provider provides notice to the appropriate person described in paragraph (e) of subsection 1 and:

(a) Contractually prohibits the third-party service provider from using any such information for any purpose other than providing the contracted school services to, or on behalf of, the school service provider;

(b) Prohibits the third-party service provider from disclosing any personally identifiable information concerning a pupil unless the disclosure is authorized pursuant to subsection 1; and



(c) Requires the third-party service provider to comply with the requirements of sections 1.5 to 8.5, inclusive, of this act.

3. A school service provider shall delete any personally identifiable information concerning a pupil that is collected or maintained by the school service provider and that is under the control of the school service provider within a reasonable time not to exceed 30 days after receiving a request from the board of trustees of the school district in which the school that the pupil attends is located, the governing body of the charter school that the pupil attends or the governing body of the university school for profoundly gifted pupils that the pupil attends, as applicable. The board of trustees or the governing body, as applicable, must have a policy which allows a parent or legal guardian of a pupil to request that such information about the pupil be deleted. The school service provider shall delete such information upon the request of the parent or legal guardian of a pupil if no such policy exists.

4. Any agreement entered into by a school service provider that provides for the disclosure of personally identifiable information must require that the person or governmental entity to whom the information will be disclosed abide by the requirements imposed pursuant to this section.

5. A school service provider shall not:

(a) Use personally identifiable information to engage in targeted advertising.

(b) Except as otherwise provided in this paragraph, sell personally identifiable information concerning a pupil. A school service provider may provide personally identifiable information concerning pupils to an entity that purchases, merges with or otherwise acquires the school service and the acquiring entity becomes subject to the requirements of sections 1.5 to 8.5, inclusive, of this act.

(c) Use personally identifiable information concerning a pupil to create a profile of the pupil without the consent of the appropriate person described in paragraph (e) of subsection 1. For the purposes of this paragraph, “creating a profile” does not include collecting or retaining account registration records or information that remains under the control of the pupil if he or she is at least 13 years of age, the parent or legal guardian of any pupil, the teacher of the pupil or the board of trustees of the school district in which the school that the pupil attends is located, the governing body of the charter school that the pupil attends or the governing body of the university school for profoundly gifted pupils that the pupil attends, as applicable.



(d) Use personally identifiable information concerning a pupil in a manner that is inconsistent with any contract governing the activities of the school service provider for the school service in effect at the time the information is collected or in a manner that violates any of the provisions of sections 1.5 to 8.5, inclusive, of this act.

(e) Knowingly retain, without the consent of the appropriate person described in paragraph (e) of subsection 1, personally identifiable information concerning a pupil beyond the period authorized by the contract governing the activities of the school service provider.

6. This section does not prohibit the use of personally identifiable information concerning a pupil that is collected or maintained by a school service provider for the purposes of:

(a) Adaptive learning or providing personalized or customized education;

(b) Maintaining or improving the school service;

(c) Recommending additional content or services within a school service;

(d) Responding to a request for information by a pupil;

(e) Soliciting feedback regarding a school service; or

(f) Allowing a pupil who is at least 13 years of age or the parent or legal guardian of any pupil to download, transfer, or otherwise maintain data concerning a pupil.

7. A school service provider that violates the provisions of this section is subject to a civil penalty in an amount not to exceed \$5,000 per violation. The Attorney General may recover the penalty in a civil action brought in the name of the State of Nevada in any court of competent jurisdiction.

Sec. 7. 1. A school service provider shall establish and carry out a detailed plan for the security of any data concerning pupils that is collected or maintained by the school service provider. The plan must include, without limitation:

(a) Procedures for protecting the security, privacy, confidentiality and integrity of personally identifiable information concerning a pupil; and

(b) Appropriate administrative, technological and physical safeguards to ensure the security of data concerning pupils.

2. A school service provider shall ensure that any successor entity understands that it is subject to the provisions of sections 1.5 to 8.5, inclusive, of this act and agrees to abide by all privacy and security commitments related to personally identifiable information concerning a pupil collected and maintained by the school service provider before allowing a successor entity to access such personally identifiable information.



Sec. 8. 1. *Each school district and the governing body of a charter school or a university school for profoundly gifted pupils, as applicable, shall annually provide professional development regarding the use of school service providers and the security of data concerning pupils.*

2. *Teachers and other licensed educational personnel employed by a school district, charter school or university school for profoundly gifted pupils shall complete the professional development provided pursuant to subsection 1.*

Sec. 8.3. *A school service provider may use and disclose information derived from personally identifiable information concerning a pupil to demonstrate the effectiveness of the products or services of the school service provider, including, without limitation, for use in advertising or marketing regarding the school service so long as the information is aggregated or is presented in a manner which does not disclose the identity of the pupil about whom the information relates.*

Sec. 8.5. *A person or governmental entity may not waive or modify any right, obligation or liability set forth in sections 1.5 to 8.5, inclusive, of this act. Any condition, stipulation or provision in a contract which seeks to do so or which in any way conflicts with the provisions of sections 1.5 to 8.5, inclusive, of this act is against public policy and is void and unenforceable.*

Sec. 9. NRS 391.31297 is hereby amended to read as follows:

391.31297 1. A teacher may be suspended, dismissed or not reemployed and an administrator may be demoted, suspended, dismissed or not reemployed for the following reasons:

- (a) Inefficiency;
- (b) Immorality;
- (c) Unprofessional conduct;
- (d) Insubordination;
- (e) Neglect of duty;
- (f) Physical or mental incapacity;
- (g) A justifiable decrease in the number of positions due to decreased enrollment or district reorganization;
- (h) Conviction of a felony or of a crime involving moral turpitude;
- (i) Inadequate performance;
- (j) Evident unfitness for service;
- (k) Failure to comply with such reasonable requirements as a board may prescribe;
- (l) Failure to show normal improvement and evidence of professional training and growth;
- (m) Advocating overthrow of the Government of the United States or of the State of Nevada by force, violence or other unlawful



means, or the advocating or teaching of communism with the intent to indoctrinate pupils to subscribe to communistic philosophy;

(n) Any cause which constitutes grounds for the revocation of a teacher's license;

(o) Willful neglect or failure to observe and carry out the requirements of this title;

(p) Dishonesty;

(q) ~~Breaches in the security or confidentiality of the questions and answers of the examinations that are administered pursuant to NRS 389.550 or 389.805 and the college and career readiness assessment administered pursuant to NRS 389.807.~~

~~(r)~~ Intentional failure to observe and carry out the requirements of a plan to ensure the security of examinations and assessments adopted pursuant to NRS 389.616 or 389.620;

~~(s)~~ (r) An intentional violation of NRS 388.5265 or 388.527;

~~(t)~~ (s) Gross misconduct; or

~~(u)~~ (t) An intentional failure to report a violation of NRS 388.135 if the teacher or administrator witnessed the violation.

2. *If a teacher or administrator breaches the security or confidentiality of the questions and answers of the examinations that are administered pursuant to NRS 389.550 or 389.805 or the college and career readiness assessment administered pursuant to NRS 389.807, the board of trustees of a school district, governing body of a charter school or governing body of a university school for profoundly gifted pupils, as applicable, shall:*

(a) *Suspend, dismiss or fail to reemploy the teacher; or*

(b) *Demote, suspend, dismiss or fail to reemploy the administrator.*

3. In determining whether the professional performance of a licensed employee is inadequate, consideration must be given to the regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the board.

~~3.~~ 4. As used in this section, "gross misconduct" includes any act or omission that is in wanton, willful, reckless or deliberate disregard of the interests of a school or school district or a pupil thereof.

Sec. 10. NRS 391.313 is hereby amended to read as follows:

391.313 1. Whenever an administrator charged with supervision of a licensed employee believes it is necessary to admonish the employee for a reason that the administrator believes may lead to demotion or dismissal or may cause the employee not to be reemployed under the provisions of NRS 391.31297, the administrator shall:



(a) Except as otherwise provided in subsection 3, bring the matter to the attention of the employee involved, in writing, stating the reasons for the admonition and that it may lead to the employee's demotion, dismissal or a refusal to reemploy him or her, and make a reasonable effort to assist the employee to correct whatever appears to be the cause for the employee's potential demotion, dismissal or a potential recommendation not to reemploy him or her; and

(b) Except as otherwise provided in NRS 391.314, allow reasonable time for improvement, which must not exceed 3 months for the first admonition.

➤ The admonition must include a description of the deficiencies of the teacher and the action that is necessary to correct those deficiencies.

2. An admonition issued to a licensed employee who, within the time granted for improvement, has met the standards set for the employee by the administrator who issued the admonition must be removed from the records of the employee together with all notations and indications of its having been issued. The admonition must be removed from the records of the employee not later than 3 years after it is issued.

3. An administrator need not admonish an employee pursuant to paragraph (a) of subsection 1 if his or her employment will be terminated pursuant to NRS 391.3197.

4. A licensed employee is subject to immediate dismissal or a refusal to reemploy according to the procedures provided in NRS 391.311 to 391.3197, inclusive, without the admonition required by this section, on grounds contained in paragraphs (b), (f), (g), (h), (p) and ~~(t)~~ (s) of subsection 1 of NRS 391.31297.

Sec. 11. NRS 391.3161 is hereby amended to read as follows:

391.3161 1. Each request for the appointment of a person to serve as a hearing officer must be submitted to the Superintendent of Public Instruction.

2. Within 10 days after receipt of such a request, the Superintendent of Public Instruction shall request that the Hearings Division of the Department of Administration appoint a hearing officer.

3. The State Board shall prescribe the procedures for exercising challenges to a hearing officer, including, without limitation, the number of challenges that may be exercised and the time limits in which the challenges must be exercised.

4. A hearing officer shall conduct hearings in cases of demotion, dismissal or a refusal to reemploy based on the grounds contained in ~~(subsection)~~ **subsections 1 and 2** of NRS 391.31297.



5. This section does not preclude the employee and the superintendent from mutually selecting an attorney who is a resident of this State, an arbitrator provided by the American Arbitration Association or a representative of an agency or organization that provides alternative dispute resolution services to serve as a hearing officer to conduct a particular hearing.

Sec. 12. The provisions of sections 1.5 to 8.5, inclusive, of this act:

1. Apply to any agreement entered into, extended or renewed on or after July 1, 2015, and any provision of the agreement that is in conflict with that section is void.

2. Apply on July 1, 2018, to any agreement entered into before July 1, 2015.

Sec. 13. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 14. This act becomes effective on July 1, 2015.

