

**MINUTES OF THE
SENATE COMMITTEE ON EDUCATION**

**Seventy-Eighth Session
May 31, 2015**

The Senate Committee on Education was called to order by Chair Becky Harris at 9:02 a.m. on Sunday, May 31, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Becky Harris, Chair
Senator Scott Hammond, Vice Chair
Senator Don Gustavson
Senator Mark A. Lipparelli
Senator Joyce Woodhouse
Senator Moises (Mo) Denis

COMMITTEE MEMBERS ABSENT:

Senator Tick Segerblom (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Randy Kirner, Assembly District No. 26

STAFF MEMBERS PRESENT:

Todd Butterworth, Policy Analyst
Risa Lang, Counsel
Jan Brase, Committee Secretary

OTHERS PRESENT:

Lindsay Anderson, Washoe County School District
Nicole Rourke, Clark County School District

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Steve Canavero, Ph.D., Deputy Superintendent for Student Achievement,
Department of Education
Susan Fischer, Infinite Campus, Inc.
Janine Hansen, Nevada Families Association
Mary Pierczynski, Ed.D., Nevada Association of School Superintendents
Patrick Gavin, Director, State Public Charter School Authority
Seth Rau, Nevada Succeeds
Jessica Ferrato, Nevada Association of School Boards
Mendy Elliott, ACT, Inc.
Marla McDade Williams, Amazon, Inc.
Ray Bacon, Nevada Manufacturers Association

Chair Harris:

I will open the hearing on Assembly Bill (A.B.) 221.

ASSEMBLY BILL 221 (2nd Reprint): Revises provisions relating to data concerning pupils. (BDR 34-147)

Assemblyman Randy Kirner (Assembly District No. 26):

Assembly Bill 221 is a student data privacy and protection bill. The effective use of student data is essential for improving student outcomes and equipping educators with information they need to help every student remain on the path to educational success. Student data can help teachers customize instruction, equip parents and students with information to make informed educational choices and assist policy makers with program evaluations and resource allocations. In a world where knowledge is power, student data provide parents, students and educators with the tools they need to be sure every student attains his or her potential.

Parents and students must be able to trust that student educational data are secure, kept private and used solely for the betterment of students' educational experience. We need to be aware and to structure how student data are collected, stored, used and shared. While developing A.B. 221, I focused on several principles. First, student educational data are crucial for improving student outcomes and fostering an environment of personalized learning. Second, schools should not collect any information beyond what is necessary for students to learn and succeed. Third, schools should communicate clearly with parents about how student data are collected, stored, used and shared. Fourth, students and parents need to trust that the student data are protected

and used solely for improving student learning. Fifth, schools must ensure the data are timely, accurate and readily available for parental review. Schools should clarify who is responsible for ensuring student data are secure and should implement policies, systems and procedures necessary to ensure security. Finally, schools should conduct compliance audits, perform related oversight and provide remedies for privacy, security breaches or misuse of data.

We worked with representatives from the Clark County School District (CCSD), Washoe County School District (WCSD), Infinite Campus, Inc., the Department of Education (NDE), the Legislative Counsel Bureau staff and respective attorneys. We have put together a student data privacy and protection policy of which the State can be proud.

Information utilized from the school level to national level is composed of many different kinds of data. For example, at the school level you might have the students' names and their locker combinations. This is information not necessary at the district or state level. We also know as we move up the organizational chain, the use of data changes from individually identifiable information to aggregated information. The question becomes, what information do we need and how is it collected?

Section 2 outlines level responsibilities in developing data elements concerning individual pupils, the reasons for collecting and the purposes for the data. The NDE must publish information on third-party providers and advisors or anyone who has access to student data.

Section 3 requires the NDE to adopt policies and procedures necessary to ensure the privacy of data. Section 4 specifies that any contract entered into by the NDE and school district must provide a penalty for intentional or grossly negligent noncompliance with the terms of the contract. The contract will specify what may or may not be used and how it will be used. For example, use of the data for marketing purposes is expressly prohibited unless it is provided for in the contract. For example, students may opt to provide testing scores for college applications.

Section 5 requires the adoption of a detailed plan to provide for the security of student data. Section 6, subsection 1, paragraph (e) requires a description of any significant changes made to the collection, maintenance or transfer of student data.

Chair Harris:

Concerning new data elements that may be proposed for inclusion, what process do you anticipate?

Assemblyman Kirner:

There are several reasons for including new data. New legislation may require student information not currently collected.

Chair Harris:

There will be independent authority for schools to determine the type of data they choose to include. For larger, more comprehensive collection, decisions will be made at the NDE. Is this correct?

Assemblyman Kirner:

It is partly correct. Section 8 outlines school district-level responsibilities. The board of trustees has the opportunity to review categories of information as opposed to elements of information, which can be numerous. Section 8, subsection 2, requires the board of trustees of each school district to publish a list of the third-party service providers having access to student data.

Section 9 concerns information that might be collected by service providers when students or educators use their services. This would include software offered to users free of charge for basic services.

Senator Hammond:

Concerning third-party data, much of it will be shared. At what point will parents be included in data sharing and release decisions? If a school district wants to coordinate or contract with a third-party vendor for data collection, will parents be notified or have the opportunity to object?

Assemblyman Kirner:

Section 2 requires the NDE to establish, publish and make information publically available on its Website. It is a complicated subject, and we have made the language general in order to capture as many aspects as possible.

Senator Hammond:

Parents will have access to information about what is being collected and who is collecting it. Can parents opt out of a data release?

Assemblyman Kirner:

There is no opt out provision in A.B. 221. We have heard the argument that parents own the data. If we allow for this option, we will end up with skewed data. The most important principle of data collection is to be able to use the data to improve educational outcomes for all students, both individually and in the aggregate. We allow parents to challenge information in the system and to request corrections if necessary.

Chair Harris:

Section 9, subsection 2 addresses policies and procedures for the manner in which student data are provided to a "person." Can you expand on the definition of a person as it relates to A.B. 221?

Assemblyman Kirner:

Supporters of the bill may be able to provide a detailed explanation.

Senator Denis:

Section 2 requires the NDE to publish information relating to student data. Can you explain what is meant by "publish?"

Assemblyman Kirner:

First, each district and the NDE are required to have written plans which is one means of publication. A posting on a Website is a second means of publication. We do not envision newspaper notices or mailings.

Senator Denis:

When information is only available online, many of my constituents do not have access to that information.

Assemblyman Kirner:

There is a requirement for a formal policy that would be available for review at the school.

Senator Denis:

Are there specific provisions for audits to ensure data is used properly?

Assemblyman Kirner:

Representatives from the NDE will explain the audit processes. The language of the bill is not specific.

Lindsay Anderson (Washoe County School District):

The WCSD supports A.B. 221. We have been working with the sponsor for over a year and appreciate the importance of protecting student data. We have been actively trying to engage parents and make student data available to them. The WCSD was the first district to move toward the Infinite Campus system. We have adopted a student data policy, which may need some adjustments based on this legislation, but are willing to make necessary accommodations.

Nicole Rourke (Clark County School District):

The Clark County School District supports A.B. 221. The bill provides transparency to the process and considers the fine line between encouraging innovation and ensuring privacy and security of student data. We have made a major effort to expand the Infinite Campus system and to engage parents. There is a great deal of information available to parents, and we are encouraging them to take advantage of the opportunities to help their children.

Steve Canavero, Ph.D. (Deputy Superintendent for Student Achievement, Department of Education):

The NDE takes its responsibility as stewards of student and teacher data seriously. We requested and received public input on our student data share and privacy policy. Many of the suggestions have been approved and adopted by the State Board of Education. Assembly Bill 221 strengthens our policy and we fully support the bill.

Chair Harris:

Can you explain the process for adding a new data point when collecting information? What are the criteria for identifying appropriate data? Is the process internal or are parents involved in any way?

Ms. Rourke:

It is now an internal process. The CCSD requires that the request be valid and related to education. Much of the information collected is relevant only at the school or district level.

Ms. Anderson:

The policy of adding new data points within the WCSD is an internal process and has been adopted by the board of trustees. We continue to develop procedures and policies as data collection is used more commonly.

Dr. Canavero:

Historically, the NDE has relied upon statutory requirements.

Chair Harris:

Section 9, subsection 2 references data provided to a "person." Can you provide details?

Ms. Anderson:

As public entities, we are required to respond to public information requests. This section provides us with the ability to comply while protecting the data.

Dr. Canavero:

I would add that a "person" could be an entity.

Senator Denis:

Would parents be allowed to review information relating to their child? Is there a process in place?

Ms. Anderson:

Parents can view all information through the Infinite Campus system. If parents were concerned that information has been collected, but was not available on Infinite Campus, there is a request process available. The only barrier would be in locating the information within the system. For example, health data would be collected and stored outside the Infinite Campus portal. We make every effort to accommodate every request.

Ms. Rourke:

Individual level information is available at the district level. Typically, this information is collected from parents.

Dr. Canavero:

Parental access to student information has been an ongoing concern for the NDE. The data in our system are, essentially, mirror images of district level data.

We refer families requesting student level data to the district, although we can accommodate requests.

Senator Denis:

Does A.B. 221 either assist or restrict your ability to provide information?

Dr. Canavero:

The bill provides a level of transparency for families. Some questions can be answered before meeting with our staff. Parents will now know the nature of available information.

Senator Hammond:

Much of the data collected at the school and district level does not come from parents. As the information technology becomes more sophisticated, the easier it becomes to disaggregate collective data. Parents need to have a level of trust and have easy access to their children's information.

Can you outline some of the issues you will be addressing during the interim? I am concerned about issues such as audits and reviews of breaches in the data, penalties for violations of third-party terms of agreement and fines for violations. Do you believe A.B. 221 addresses parental concerns about security and privacy?

Dr. Canavero:

The bill has strong provisions. One important aspect of the bill addresses specific reasons for collecting information. Over the past few months, we have reviewed every element collected and asked ourselves why we collect a particular data point. When there was no plausible answer, the data point has been removed. There must always be a specific and defensible reason for collecting information. For example, we had been collecting students' Social Security numbers. There is no need or reason to do so. It was a latent field that has been removed.

Our third-party vendors are committed to the Family Educational Rights and Privacy Act (FERPA) and are bound by contract to nondisclosure. Data fields are carefully selected by the NDE as available to each vendor. Fines and penalties for noncompliance are determined by our legal department.

We have been responsive to concerns. For example, personally identifiable information will not be available to the vendor, Smarter Balanced Assessment Consortium, but will be available to the testing vendor, Measured Progress, Inc.

Ms. Rourke:

We err on the side of caution when releasing data. We have a rigorous process in place. A parent was concerned about the question of a student's race on the registration form. There is specific federal guidance requiring reporting of this information. Assembly Bill 221 outlines changes to policy, and we anticipate a good deal of activity during the interim.

Ms. Anderson:

The WCSD will continue to be diligent in protecting student data.

Senator Hammond:

Schools and school districts have been collecting data for a long time; however, accessibility and the ability to control the data have changed. Your work is appreciated.

Senator Denis:

The NDE has information identical to information in the school districts. Is that correct?

Dr. Canavero:

Correct, the NDE does not create data. The only exception is when we receive results from our assessments. The NDE retains a subset of districts' data.

Susan Fisher (Infinite Campus, Inc.):

We have worked to clarify the approach to cataloging and reporting data while protecting student privacy. Assembly Bill 221 marks a clear path to the process, and Infinite Campus supports the bill.

Janine Hansen (Nevada Families Association):

Nevada Families Association supports A.B. 221; however, we are concerned about the weakening of the FERPA. We are concerned about the security of student data. Secretary of Education Arne Duncan has said,

Hopefully, some day we can track children from preschool to high school, from high school to college, and from college to career ...

We want to see more states build comprehensive systems that can track students from PK through college and then link school data to workforce data. We want to know whether Johnny participated in early learning programs and then completed college on time and whether those things have any bearing on his earnings as an adult.

Parents might be concerned about this data being available and their child tracked. We see A.B. 221 as a start in protecting student data, but we continue to be concerned.

Mary Pierczynski, Ed.D. (Nevada Association of School Superintendents):

The Nevada Association of School Superintendents supports A.B. 221. Some rural districts do not have Infinite Campus, but this bill will assist in ensuring protection of student data.

Senator Denis:

How can data in rural schools be protected without Internet technology systems?

Dr. Pierczynski:

Each rural county has at least one staff member reviewing and coordinating data. Guidelines from the NDE will be useful, and I am confident staff will take this duty seriously.

Patrick Gavin, Director (State Public Charter School Authority):

The State Public Charter School Authority supports A.B. 221. The legislation provides a balance among data privacy, transparency, accountability and innovation. The advent of connected data systems presents risks and opportunities. This bill furthers our goal of providing personalized learning for our students.

Seth Rau (Nevada Succeeds):

Nevada Succeeds supports A.B. 221.

Jessica Ferrato (Nevada Association of School Boards):

The Nevada Association of School Boards supports A.B. 221.

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Mendy Elliott (ACT, Inc.):

We are sensitive to the release of student data and support A.B. 221. It is a roadmap for vendors in the collection and use of data. We have submitted a letter of support ([Exhibit C](#)).

Marla McDade Williams (Amazon, Inc.):

Amazon, Inc. supports A.B. 221.

Ray Bacon (Nevada Manufacturers Association):

The U.S. Supreme Court decided that teachers' emails are not private. There is a possibility that public figures' email accounts can be breached or compromised through no fault of their own. This bill does not address the issue, but it may be something to consider.

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Chair Harris:

I will close the hearing on A.B. 221. There being no further comment or business before the Committee, the meeting is adjourned at 10:02 a.m.

RESPECTFULLY SUBMITTED:

Jan Brase,
Committee Secretary

APPROVED BY:

Senator Becky Harris, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	2		Attendance Roster
A.B. 221	C	1	Mendy Elliott / ACT, Inc.	Letter of Support