

Amendment No. 1 to HB1549

Brooks H
Signature of Sponsor

AMEND Senate Bill No. 1835

House Bill No. 1549*

by deleting the preamble to the bill and by substituting instead:

WHEREAS, the federal government has no constitutional authority to set educational standards for Tennessee or to determine how children in Tennessee will be educated. Any partnership with the federal government is solely at the discretion of the state; and

WHEREAS, selection of educational standards for Tennessee public schools is the exclusive right of state and local education authorities; and

WHEREAS, intrusive data tracking is an invasion of the rights of students and their families and any data collected should be used for the sole purpose of tracking the academic progress and needs of students by Tennessee education officials; now, therefore,

AND FURTHER AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 1, Part 3, is amended by adding the following language as a new, appropriately designated section:

49-1-3__.

(a) No educational standards shall be imposed on the state by the federal government. Any adoption of educational standards for the public schools of the state shall be done freely by the state board of education which, except as provided in subsection (b), may change, adjust or recede from a standard at any time.

(b) A proposed change or addition to an educational standard, including, but not limited to, the Next Generation Science Standards, the National

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Curriculum Standards for Social Studies, the National Health Education Standards, or the National Sexuality Education Standards shall be posted for public review on the state board's web site and submitted to the education committees of the house of representatives and the senate at least sixty (60) days before the state board meeting during which the final adoption of the proposed standard is to be considered. The state board may vote on adoption of standards or proposed changes or additions only at a public meeting at which a quorum is in attendance.

(c) The state board shall not join a testing consortium inclusive of multiple states that requires the adoption of common standards in social studies or science subjects, unless the board provides at least sixty (60) days notice to the education committees of the house of representatives and the senate and posts such notice on its web site at least sixty (60) days before officially joining any such consortium.

(d) Data collected from the use of or testing under educational standards adopted by the state board shall be used for the sole purpose of tracking the academic prowess and needs of students.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 1, is amended by adding Sections 3 through 10 as a new, appropriately designated part.

SECTION 3. This part shall be known and may be cited as the "Data Accessibility, Transparency and Accountability Act".

SECTION 4. As used in this part:

- (1) "Aggregate data" means data collected or reported at the group, cohort or institutional level;
- (2) "Biometric record" means a record of one (1) or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual;
- (3) "Data system" means the body of student data collected by the department of education;
- (4) "De-identified data" means a student dataset in which parent and student identifying information, including the personal identification number, has been removed;
- (5) "Department" means the department of education;
- (6) "FERPA" means the federal Family Educational Rights and Privacy Act codified at 20 U.S.C. § 1232g;
- (7) "Personal identification number" means the unique student identifier assigned to a student under § 49-6-5101;
- (8) "State board" means the state board of education;
- (9)
- (A) "Student data" means data collected or reported at the individual student level that is included in a student's educational record;
- (B) "Student data" includes:
- (i) State and national assessment results, including information on untested public school students;
- (ii) Course taking and completion, credits earned and other transcript information;
- (iii) Course grades and grade point average;

(iv) Date of birth, grade level and expected graduation date or graduation cohort;

(v) Degree, diploma, credential attainment and other school exit information such as receipt of the GED® and drop-out data;

(vi) Attendance and mobility;

(vii) Data required to calculate the federal four-year adjusted cohort graduation rate, including sufficient exit and drop-out information;

(viii) Discipline reports limited to objective information sufficient to produce the federal Title IV annual incident report;

(ix) Remediation;

(x) Special education data; and

(xi) Demographic data and program participation information; and

(C) Unless included in a student's educational record, "student data" does not include:

(i) Juvenile delinquency records;

(ii) Criminal records;

(iii) Medical and health records;

(iv) Student social security number; and

(v) Student biometric information; and

(10) "Teacher data" means personal summative and evaluation scores, the access to which is limited to the department, LEA administrators, local boards of education or those with direct supervisory authority who require such access

to perform their assigned duties. Nothing in this part shall restrict the availability of information pursuant to § 49-1-606.

SECTION 5. The state board of education shall:

(1) Create, publish and make publicly available a data inventory and dictionary or index of data elements with definitions of individual student data fields currently in the student data system along with the purpose or reason for inclusion in the data system;

(2) Develop, publish and make publicly available policies and procedures to comply with FERPA, § 10-7-504 and other relevant privacy laws and policies.

These policies and procedures shall, at a minimum, require that:

(A) Access to student and de-identified data in the student data system is restricted to:

(i) The authorized staff of the department and the department's contractors who require access to perform their assigned duties;

(ii) LEA administrators, teachers and school personnel who require access to perform their assigned duties;

(iii) Students and their parents; provided, however, that a student or the student's parents may only access the student's individual data;

(iv) The authorized staff of other state agencies as permitted by law; provided, however, that within sixty (60) days of providing such access, the department shall provide notice of such release to the state board and the education committees of the house of representatives and the senate and post such notice on the department's web site;

(v) Parties conducting research for or on behalf of the department or an LEA, provided such access is granted in compliance with FERPA and other relevant state and federal privacy laws and policies, and provided the department shall provide notice of such release to the state board and the education committees of the house of representatives and the senate and post such notice on the department's web site;

(vi) Appropriate entities in compliance with a lawfully issued subpoena or court order; or

(vii) Appropriate officials in connection with an interagency audit or evaluation of a federal or state supported education program;

(B) The department uses only aggregate data in public reports or in response to public record requests in accordance with subdivision (3);

(C) The commissioner develops criteria for the approval of research and data requests from state and local agencies, the general assembly, researchers and the public; provided, however, that:

(i) Unless otherwise approved by the state board or permitted in this part, student data maintained by the department shall remain confidential; and

(ii) Unless otherwise permitted in this part or approved by the state board to release student or de-identified data in specific instances, the department may only use aggregate data in the release of data in response to research and data requests; and

(D) Students and parents are notified of their rights under federal and state law;

(3) Unless otherwise approved in this part or by the state board, the department shall not transfer student or de-identified data deemed confidential under subdivision (2)(C)(i) to any federal agency or other organization or entity outside the state, except when:

(A) A student transfers out of state or an LEA seeks help with locating an out-of-state transfer;

(B) A student leaves the state to attend an out-of-state institution of higher education or training program;

(C) A student registers for or takes a national or multistate assessment;

(D) A student voluntarily participates in a program for which such data transfer is a condition or requirement of participation;

(E) The department enters into a contract that governs databases, assessments, special education or instructional supports with an out-of-state vendor; or

(F) A student is classified as "migrant" for federal reporting purposes;

(4) Develop a detailed data security plan that includes:

(A) Guidelines for authorizing access to the teacher data system and to individual teacher data including guidelines for authentication of authorized access;

(B) Guidelines for authorizing access to the student data system and to individual student data including guidelines for authentication of authorized access;

(C) Privacy compliance standards;

(D) Privacy and security audits;

(E) Breach planning, notification and procedures; and

(F) Data retention and disposition policies;

(5) Ensure routine and ongoing compliance by the department with FERPA, § 10-7-504, other relevant privacy laws and policies, and the privacy and security policies and procedures developed under the authority of this part, including the performance of compliance audits;

(6) Ensure that any contracts that govern databases, assessments or instructional supports that include student or de-identified data and are outsourced to private vendors include express provisions that safeguard privacy and security and include penalties for noncompliance; and

(7) Notify the governor and the general assembly within sixty (60) days of the following:

(A) Any new student data fields included in the state student data system;

(B) Changes to existing data collections required for any reason, including changes to federal reporting requirements made by the United States department of education;

(C) Any exceptions granted by the state board in the past year regarding the release or out-of-state transfer of student or de-identified data accompanied by an explanation of each exception; and

(D) The results of any and all privacy compliance and security audits completed in the past year. Notifications regarding privacy compliance and security audits shall not include any information that would itself pose a security threat to the state or local student information systems or to the secure transmission of data between state and local systems by exposing vulnerabilities.

SECTION 6.

(a) Parents and guardians have the right to inspect and review their children's education records maintained by the school.

(b) Parents and guardians have the right to request student data specific to their children's educational records.

(c) LEAs shall provide parents or guardians with a copy of their children's educational records upon request.

(d)

(1) The department shall develop a model student records policy for LEAs that requires an LEA to:

(A) Annually notify parents and guardians of their right to request student information;

(B) Ensure security when providing student data to parents or guardians;

(C) Ensure student data is provided only to authorized individuals;

(D) Set the timeframe within which record requests must be provided; and

(E) Consider implementation of a plan to allow parents and guardians to view online, download, and transmit data specific to their children's educational records.

(2) The department shall develop the model student records policy by December 31, 2014. An LEA shall adopt the model policy or develop its own policy prior to the beginning of school for the 2015-2016 school year. Before implementing a policy other than the model policy, an LEA shall submit the policy to the department for approval.

SECTION 7. LEAs and schools shall not collect individual student data on:

- (1) Political affiliation;
- (2) Religion;
- (3) Voting history; and
- (4) Firearms ownership.

SECTION 8.

(a) Unless explicitly mandated by state or federal law, a state agency or education institution shall obtain written consent from parents or students, in the case of students eighteen (18) years of age or older, before collecting any individual student biometric data, student data relative to analysis of facial expressions, EEG brain wave patterns, skin conductance, galvanic skin response, heart-rate variability, pulse, blood volume, posture, and eye-tracking, or data resulting from state or national assessments or surveys that measure attitudes or perceptions toward drugs, alcohol or sex.

(b) No state agency or education institution shall pursue or accept any grant whether from the federal government or any private entity that requires collecting or reporting information in violation of subsection (a).

(c) No state or national student assessment shall be adopted or administered in this state that requires collecting or reporting information in violation of subsection (a).

SECTION 9. Any collection of student data by the department existing on July 1, 2014, shall not be considered a new student data collection in accordance with subdivision (7)(A) of Section 5 of this act.

SECTION 10. The state board is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 11. This act shall take effect July 1, 2014, the public welfare requiring

it.