

November 17, 2009

Senate Health, Education, Labor and Pensions Committee
United States Senate
Washington, DC 20510

Dear Senator:

We write on behalf of the undersigned organizations to express our concerns about H.R. 3221 the “Student Aid and Fiscal Responsibility Act of 2009” (SAFRA) now being considered in the Senate Committee on Health, Education, Labor and Pensions. SAFRA proposes increases in federal funding for state student tracking systems that, once fully implemented, would contain an extraordinary amount of highly sensitive information about children, whom they would continue to track into adulthood over time.

Some 41 states have implemented some type of student tracking system already, and others are sure to join them simply because of the availability of ample federal funds. Indeed, an early discussion draft of the Senate version of SAFRA would provide an additional \$500 million in funding for the expansion of state student tracking data systems to enable states to collect and store students’ personal information on subjects ranging from pre-natal medical records to education, employment, income, military service and criminal records.

The apparent rationale for the use of federal funds to promote such inter-operable “pre-birth to grave” state data systems is to provide the states and the federal government better information for future policy development. We do not challenge the right of the federal government or the states to collect the data they need to ensure program efficiency and accountability. We are gravely concerned, however, with the open-ended and overbroad scope of the proposed data collection, and are particularly alarmed at states’ failure to adhere to appropriate safeguards for privacy and accuracy.

- When information is transmitted to state data warehouses for evaluation, the states are not currently required to provide notice to families, nor are these warehouses always required to allow parents to review and correct their children’s records.
- The states are not obtaining consent from families for disclosure of information to virtually any state official, because access authorization rules are non-existent.
- The states are not always mandating that contractors working on these complex information technology projects sign a confidentiality agreement, nor are they putting in place restrictions on commercial uses of these data by their contractors.
- The states are not currently required to maintain audit trails of authorized access to these records, nor do they have to notify individuals in the event unauthorized access results in disclosure of personal information to hackers or identity thieves.

- In many cases the states are not adopting data retention policies to minimize the amount of personal data about cohorts of children as they age. In fact, the longitudinal nature of these data systems strongly suggests that they will retain personally identifiable data permanently.
- The states are not currently required to conduct a privacy impact assessment, or, for that matter, even develop a data safeguarding plan.

A recent study by the Fordham Center on Law and Information Policy demonstrates that the lack of restrictions on the collection of student information has resulted in massively overbroad data collection on K-12 students.¹ A sampling of the data collected by particular states includes: pregnancy, mental health information, criminal history, birth order, victims of peer violence, parental education, medical test results, and birth weight. Some of this information has a tenuous connection to educational achievement. All of it should be carefully controlled, collected only for a limited purpose, and discarded when no longer needed.

Existing proposals seem to advocate for a something other than a limited approach, one that collects more information and links it together from birth to college and allows it to be used for any purpose. Such an approach treats American school children as lab rats. It assumes that all data collection is beneficial and ignores the privacy risks associated with current data protection practices.

Any data collection on students should only be undertaken with clear guidance setting strict limits and minimum due process standards. Specifically any database of personal information about students should have policies that govern:

- **Notice.** Students should know both the information collected about them and how they can opt out.
- **Purpose and Use Limitations.** There must be a specific purpose governing each piece of information collected and use of the data should be limited to that purpose.
- **Retention Limitations.** Data should only be held for a limited period of time and then destroyed.
- **Access controls.** Limit access to databases to just the individuals and agencies meeting the purpose and use limitations defined at the time of collection.
- **Outsourcing.** Any contracts governing databases outsourced to private companies should contain express language requiring privacy and penalties for non-compliance.
- **Audit logs.** States must be able to determine who has accessed records so they can police against misconduct.²

¹ The full study can be found at: <http://law.fordham.edu/center-on-law-and-information-policy/14769.htm>

² Many of these policy changes were also recommended by the Fordham Center on Law and Information Policy and drawn from best practices by the states.

These principles are the standards by which any fair data protection regime must be judged. The fact that wholesale collection of student information is happening without the protection of these principles puts the privacy of every school child at risk. We urge you to oppose any additional funding through SAFRA for databases of student information that fails to incorporate the strict privacy safeguards described above.

Sincerely,

American Association of Collegiate Registrars and Admissions Officers.
American Civil Liberties Union
American Library Association
Association of Jesuit Colleges and Universities
Bill of Rights Defense Committee
Consumer Action
Consumer Federation of America
Council for Opportunity in Education
Fairfax County Privacy Council
Home School Legal Defense Association
Liberty Coalition
Patient Privacy Rights
Privacy Journal
Privacy Rights Clearinghouse
Privacy Times
Remar Sutton, Founder, www.privacyrightsnow.com
US Bill of Rights Foundation
World Privacy Forum