

Elements for Basic Student Privacy Legislation

Local Custody of Individual Student Information

Individual student information belongs primarily to the student, and, mostly because children can't always be trusted to hold the gradebook, the local school principal acts as custodian of that information. This model underlies federal law and established policy at most Vermont schools. Given the wide availability of computing capacity and the ease of sharing computer software, state agencies should work to empower local schools to perform their own reporting and analysis rather than usurping control of individual student information in order to supplant or augment those functions. In particular, local schools should be the original source of any reports, regardless of format, that relate to individual students or staff.

Restricting Statewide Databases

The relevant Federal statute permits and even encourages state legislatures to restrict the handling, sharing, and use of personal information in statewide student databases (see USC 20 9871 (e)(2)(C)(II) and (III)). Although the federal department of education disclaims any interest in individual student data, Vermont law should generally forbid reporting individual student information to any federal agency or official; indeed, state officials should never disclose information about students to anyone except in summary, statistical form. Information about individual students should be shared only by local schools and only as strictly required by law. Vermont should follow other states in enacting strict limitations on state collection and disclosure of individual student data.

A recent decision of the NY Supreme Court (Mona Davids *et. al.* v. John B. King, Jr., as Commissioner) suggests that the authority of school officials to outsource a statewide student database arises from their discretion under New York law rather than the state's voluntary agreement to observe the conditions of 20 USC 9871, which imposes no legal obligation to do so.

Ownership and Handling of Standardized Test Scores

The Smarter Balanced Assessment Consortium (SBAC) is the unaccountable multi-state organization to which Vermont (with 20 or so other states) has outsourced its "reformed" standardized testing program. During SBAC testing, each child's individual test responses will be monitored and collected by a remote computer over the Internet and stored in a massive national database. We need tight restrictions on the collection, sharing, and use of student test data, so that our students retain control and ownership over their testing data as they do over their other personal information. No school official should share any individual student information whatever with an outside testing organization, especially information that could enable lifelong student tracking. Because the sole claimed purpose of the SBAC is development and administration of standardized tests, the consortium should never retain or share any information whatever except with the student and his local school.

Education Secretary Holcombe has joined with educational leaders from other states to affirm that individual SBAC testing results will not be provided to the U.S. Department of Education. While laudable, voluntary affirmations by appointed officials regarding a single federal agency don't sufficiently protect our children. In the face of rapidly evolving reform, statewide longitudinal student databases, multi-state testing consortia, remote computerized testing, and outsourced information hosting, we need legislation that provides enduring, categorical protection for our students.

Model Legislation for Basic Student Privacy

1. Information relating to an individual student, however collected or stored, belongs primarily to that student; the principal at each local school shall act as sole custodian of student information, however collected or stored.
2. The custodian shall assure the integrity and confidentiality of student information. The custodian shall assure the legal rights of students to inspect and correct their records. The custodian shall assure that individual student information is stored under the custodian's direct physical control. The custodian shall prevent any sharing or transfer of individual student information to anyone outside local school staff, except (a) to the least degree strictly necessary to comply with law, or (b) with the student's prior written consent.
3. The role of custodian may be delegated only to individual persons who are directly and exclusively employed by the local school and who are ordinarily physically present at the local school during each day it is in session.
4. No public school, government agency, or official, nor any contractor or designee thereof, shall hold any ownership, right, title, or interest in information relating to an individual student or in any original work created by a student as part of his/her school work.
5. Responsibility for providing common facilities or support for school record-keeping shall not authorize a school superintendent or any other official to determine the location or manner in which individual student information is stored or shared, which authority is reserved to the local school custodian of student information and the local school board.
6. Nothing in this section shall be construed to limit the ability of students or their parents voluntarily to use computer or network systems provided by the school or outside parties to enrich their educational experience, provided that (a) such use is not a condition of full participation in the normal course of study, and (b) students and parents are fully informed of any terms and conditions pertaining to such use, including what data is or could be collected.
7. All information collected by any party during administration or scoring of any standardized test shall be treated as individual student information. No ownership or custodial privileges with respect to such information shall be held by or transferred to any party other than the student and the local school. No such information shall be retained by any party any longer than is strictly necessary for scoring and transmitting test results to the relevant local school. These restrictions shall be observed with respect to any standardized testing conducted within the state and shall be explicitly included in any agreement regarding same to which any public school or state agency may be party.
8. Every student shall be afforded the alternative to take any standardized test administered to his/her peers using traditional paper-and-pencil means.
9. All individual student information that may be collected or stored by the Vermont Department of Education shall continue to belong primarily to the student and be subject to all laws protecting individual student privacy and individual student rights with respect to that information. Generally, individual student information shall not be shared except by the relevant local school, and any sharing by the local school shall be either by student consent or to the least degree strictly necessary to comply with law.

10. Any individual student information collected by the Department shall be securely stored within the state under the direct physical control of the Department.

11. Except to the least degree strictly necessary to comply with legitimate court orders, or to the least degree strictly necessary to admit legally authorized auditing of federal programs, individual student information collected or stored by the Department shall never be disclosed to any party other than individual persons directly and exclusively employed by the Department within the state of Vermont in the performance of their official duties.

12. Except to the least degree strictly necessary to comply with legitimate court orders, or to the least degree strictly necessary to admit legally authorized auditing of federal programs, individual student information collected or stored by the Department shall never be disclosed to any agency or branch of the federal government, any agency of another state or foreign government, or to any consortium or cooperative organization of same.

13. Any disclosure of student information collected or stored by the Department shall be in summary or aggregated form only and contained in permanent reports internally prepared and published by the Department for public domain use.

14. Student information collected or stored by the Department shall never be used to supplant or augment reporting and analysis that could otherwise be performed by local school officials. In particular, student information collected or stored by the Department shall never be used to prepare reports, analyses, or electronic "dashboards" that relate to individual persons or localized subgroups or are directed to any audience other than the general public.

15. No state agency or local school shall accept any agreement or program that is conditioned upon collection, storage, or transfer of individual student information outside the direct legal or physical custody of the local school. The Secretary shall, no later than than 1 January 20XX, amend or nullify any existing agreements that effectively require collection, storage, or transfer of individual student information outside the direct legal or physical custody of the local school.

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