

Testimony to Oregon House Committee on Education Re: HB 2666  
by Lisa Shultz, M.S.E.E.  
8 April, 2013

Good afternoon Chair Gelser and Committee Members. My name is Lisa Shultz. I served on the Beaverton School Board from 2007-November, 2011. I am the mother of a recent graduate from Beaverton School District's Early College High School program. I have a Master's degree in electrical engineering from the Univ. of California, Berkeley and have worked in the high tech industry in Oregon for over 30 years. I am currently employed as a staff engineer for a leading supplier of software for electronic circuit design and verification.

I want to thank Representatives Frederic, Gelser and Witt for introducing legislation which is meant to address the important issue of student data privacy. However, in my testimony today I hope to show that this bill, as written, fails to take into consideration two very important developments that have resulted in an erosion of security and privacy controls relating to student data: 1) a rule change in 2011 made to the federal law governing student data privacy (FERPA) and 2) the establishment of a statewide longitudinal database system (SLDS) into which individual student records are uploaded from districts rather than transferring data aggregated by cohorts. At the end of my testimony I have suggested amendments to this bill that would provide Oregon's students with much needed protections.

Additionally, I believe that there is some confusion in the language of the bill about data security and data privacy. Security is about protections that prevent data from unintended access or use. Privacy relates to governance or more specifically, making sure that policies and rules are in place to ensure information is being collected and used in appropriate ways. Security is necessary in order to address privacy, but it is not sufficient. **Currently school districts can have the best of security but it will not prevent a student's most personal and private information from being shared without their knowledge or consent with private third parties.**

**FERPA Rule Change:**

A rule change was made to the federal law governing privacy, the Federal Education Rights and Privacy Act of 1974 (FERPA) at the end of 2011 that weakened the law allowing third party access to student data without the knowledge or consent of students or their families. A lawsuit against the U.S. Department of Education regarding the rule change has been filed by the Electronic Privacy and Information Center (EPIC) in Washington D. C. ; the rule change has also been denounced by the American Association of Registrars and Admissions Officers, the ACLU, the National Association of Independent Colleges and Universities and many others. The U.S. Department of Education's Privacy Technical Assistance Center (PTAC) itself agrees that current protections are inadequate and has urged States to adopt broad data minimization practices and to apply additional restrictions and protections to data systems containing personally identifiable information (PII).

I have strong concerns about the bill as it is written because the entity in Oregon that would be charged with making data privacy assessments is an organization that I found that testified in FAVOR of the 2011 rule change to FERPA – the Oregon Department of Education. In their letter they write:

*"In our efforts to build a robust SLDS that contains workforce information, we have been hampered by rules preventing the exchange of social security numbers. In most cases, the social security number is the primary, and most logical linking field to connect education and workforce records. Explicitly allowing the use of SSN for this purpose will lead to improved data quality and will enhance research efforts.*

***Recommendation: Amend the rule to explicitly allow the exchange of social security numbers as a linking mechanism for workforce information."***

[http://alder.orvsd.org/sites/alder.orvsd.org/files/FINAL\\_ODE\\_Comment\\_FERPA\\_NPRM.pdf](http://alder.orvsd.org/sites/alder.orvsd.org/files/FINAL_ODE_Comment_FERPA_NPRM.pdf)

Please contrast the statement above from ODE to these statements in opposition to the rule change:

1) American Association of Collegiate Registrars and Admissions Officers

*"The Department is arbitrarily expanding the number of entities that can gain access to personally identifiable information from education records, the reasons why they get access, and what they may do with the information they collect, even over the objections of the custodians of those records. **We are dismayed by the Department's disregard for privacy rights, as well as its failure to consider the impossible compliance environment these proposed regulations would create.**"*

2) American Civil Liberties Union

*"**The NPRM poses serious privacy concerns.** Personally identifiable student records include extremely sensitive information about individuals, yet these rules significantly expand the number of parties who can access a record without requiring consent from the parent or the student. These new parties include state officials not working directly on education as well as private entities that would not traditionally be able to access government educational records. Furthermore, the expansion of access to student records could eventually lead to sharing among states. If this were to happen, it could lead to the creation of an immense database holding sensitive information about most Americans."*

3) American Council on Education

*"...we believe the proposed regulations jeopardize important FERPA protections by expanding the number of individuals who may access personally identifiable information without consent, the basis on which they may obtain that access and the ability to re-disclose it to other parties...**the proposed regulations unravel student privacy protections in significant ways that are inconsistent with congressional intent.** ... We are very concerned that the NPRM greatly increases the number of agents acting on behalf of the statutorily-designated entities, while it simultaneously removes the requirement that the authority to collect such data for audit, evaluation or compliance or enforcement purposes must be established by federal, state or local law."*

4) National Association of Independent Colleges and Universities

*“NAICU believes it is essential that the privacy of student educational records be protected and has strongly supported FERPA since our founding. **We are deeply troubled, therefore, to see that these proposed regulations turn the basic purpose of FERPA on its head.** Rather than focusing on protection of privacy, the proposal instead opens new avenues for sharing personal information without the knowledge or consent of the individuals involved.”*

**Statewide Longitudinal Database System:**

Beginning in 2006, Oregon along with the majority of other states established a statewide longitudinal database system (SLDS) into which individual student records are uploaded from districts rather than transferring data aggregated by cohorts. This data contains a student’s personal identifying information and includes not only grades and test scores, but disciplinary data, counseling and medical information, and much more. The amount of data being collected appears to be growing rapidly. I want to point out that I did not know of the existence of the statewide database, neither as a parent of a child in public school, nor as a board member. I only recently learned of this in the past year and have been, frankly, astonished at what I have found.

The Center for Law and Information Privacy, at Fordham University Law School in their report titled “Children’s Education Records and Privacy” [1], strongly recommends the use of structures that anonymize student data records so that they are not traceable to an individual child as is done in Ohio and New Hampshire. You may be aware of the recent Reuters news article [11] about nine “pilot” states that have agreed to share confidential student and teacher data with a Gates-funded corporation called inBloom Inc. inBloom Inc. will hold this information and make it available to commercial vendors to help them develop and market “learning products.” Currently ODE has entered into a data sharing agreement with WICHE (Western Interstate Commission for Higher Education) , another Gates funded organization.

**Children at Risk for Identity Theft:**

Basic privacy standards dictate that strong data security measures are necessary to prevent the risk of student identity theft and data tampering from centralized databases containing children’s personal information. It is important to note that children are at a significantly higher risk for identity theft than adults, and **FERPA does not allow for any compensation to be paid to victims in the event of a data breach.** Recovering from child identity theft often takes years and costs families in the United States billions of dollars every year. During this time a student may not be able to work or go to school or may face charges for crimes they did not commit. Identity theft and data tampering of student data can leave children exposed for their entire lifetime, through no fault of their own, creating the potential for years of stress and lost opportunities.

**Summary and Proposed Amendments:**

In a climate of rapid and complex technological changes, the increasing amount of data collected and stored by education entities, and the ramifications in the event of a data breach, both legal and otherwise, strong data privacy protections are essential to ensure the future welfare of our children throughout their lifetime.

**When personal data is collected and aggregated into a structure, safety and security does not happen by accident.** It must be carefully thought out and designed into the system.

The following amendments would establish and strengthen privacy protections for students that are currently lacking.

- 1) Require that students and school district staff know what information is being collected about them, who will have access to that information, and how it will be used.
- 2) Give students/parents the right and means to correct information that is in error in any database that contains their information.
- 3) Grant to students and their guardians the right to agree or refuse to provide personal information that is not required by state or federal law.

Thank you for your consideration of this testimony and these proposed amendments to HB2666.

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### Useful links and references:

- 1) “Children’s Educational Records and Privacy – A Study of Elementary and Secondary School State Reporting Systems” by the Fordham Law School Center on Law and Information Policy  
<http://law.fordham.edu/center-on-law-and-information-policy/14769.htm>
- 2) Links to letters expressing concerns and opposition to FERPA 2011 rule change:
  - Letter from American Assoc. of Collegiate Registrars and Admissions Officers to USDE 5/23/11  
[http://www.nacua.org/documents/FERPA\\_AACRAOLetterMay2011.pdf](http://www.nacua.org/documents/FERPA_AACRAOLetterMay2011.pdf)
  - Letter from ACLU 5/23/11  
[http://www.aclu.org/files/assets/ACLU\\_Comments\\_on\\_Changes\\_to\\_the\\_Family\\_Educational\\_Rights\\_and\\_Privacy\\_Act\\_FERPA.pdf](http://www.aclu.org/files/assets/ACLU_Comments_on_Changes_to_the_Family_Educational_Rights_and_Privacy_Act_FERPA.pdf)
  - Electronic Privacy Information Center Comments 5/23/11  
[http://epic.org/privacy/student/EPIC\\_FERPA\\_Comments.pdf](http://epic.org/privacy/student/EPIC_FERPA_Comments.pdf)
  - American Council on Education  
<http://www.acenet.edu/news-room/Documents/Comments-on-the-NPRM-for-the-Family-Educational-Rights-and-Privacy-Act.pdf>
  - National Association of Independent Colleges and Universities  
[http://www.nacua.org/documents/FERPA\\_NAICULetterMay2011.pdf](http://www.nacua.org/documents/FERPA_NAICULetterMay2011.pdf)
- 3) Link to information re: EPIC v. The U.S. Department of Education  
<http://epic.org/apa/ferpa/default.html>
- 4) NBC Bay Area report on child identify theft:  
<http://www.nbcbayarea.com/investigations/Child-ID-Theft-Investigaiton-152663895.html>
- 5) Privacy Rights Clearinghouse  
<https://www.privacyrights.org/fs/fs29-education.htm#3a>
- 6) U.S. Dept. of Education Privacy Technical Assistance Center  
<http://ptac.ed.gov/>
- 7) Carnegie Mellon CyLab report on “Child Identity Theft”  
<http://www.cylab.cmu.edu/files/pdfs/reports/2011/child-identity-theft.pdf>
- 8) “Predicting Social Security Numbers from Public Data”  
<http://www.pnas.org/content/early/2009/07/02/0904891106.full.pdf>
- 9) Common Education Data Standards  
<https://ceds.ed.gov/CEDSDownloads.aspx>
- 10) “Survey Says: Parents Care About Online Data Privacy in their Children's Schools” by Bradley Shear, Law Office of Bradley S. Shear <http://safegov.org/2013/1/10/survey-says-parents-care-about-online-data-privacy-in-their-children%27s-schools>
- 11) *"In operation just three months, the database already holds files on millions of children identified by name, address and sometimes social security number. Learning disabilities are documented, test scores recorded, attendance noted. In some cases, the database tracks student hobbies, career goals, attitudes toward school - even homework completion. Local education officials retain legal control over their students' information. But federal law allows them to share files in their portion of the database with private companies selling educational products and services."*  
<http://www.reuters.com/article/2013/03/03/us-education-database-idUSBRE92204W20130303>