

Testimony to the Oregon Senate Education and Workforce Committee
28 February, 2013
by Lisa A. Shultz, M.S.E.E.

Good afternoon Committee members. My name is Lisa Shultz. I served on the Beaverton School Board from 2007-November, 2011. 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 Mentor Graphics, Corp. Mentor Graphics is a leading supplier of software for electronic circuit design and verification. I am also the mother of a recent graduate from Beaverton School District's Early College High School program. I am delighted to be here today and have this opportunity to testify in support of SB 567.

Two recent changes in education have made it essential for the legislature to act and establish strong data privacy protections for students. First, school districts are no longer the sole custodian of student education records. 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, either 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.

Second, a rule change was made to the Federal Education Rights and Privacy Act (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 Collegiate Registrars and Admissions Officers (AACRAO), 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).

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.

This bill establishes the very basic right of students to know what information is being collected about them, who will have access to that information, and how it will be used. It gives students the right to correct information that is in error. And allows students the opportunity to agree or refuse to provide personal information that is not required by state or federal law. It is worth noting that the National School Boards Association (NSBA) in their comments¹ regarding the 2011 FERPA rule change specifically stated: "...nothing in the FERPA statute states that a State or local educational authority or any agency headed by an official listed in §99.31(a)(3) have authority to receive non-consensual PII from one education agency or institution to evaluate another educational agency or institution."

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; the position of a Chief Privacy Officer is essential to ensure that the children of Oregon are adequately protected. 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. Although I understand that there is a cost associated with establishing this position and these are very tough economic times, the potential harm the State could face as a result of a data breach is significant and this position is a prudent step toward establishing a system of safeguards that will benefit Oregon's students throughout their lifetime.

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¹ <http://www.nsba.org/SchoolLaw/Issues/FERPA-Comments.pdf>

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

- 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

- Electronic Privacy Information Center Comments 5/23/11

http://epic.org/privacy/student/EPIC_FERPA_Comments.pdf

- American Council on Education

<http://www.acenet.edu/AM/Template.cfm?Section=LettersGovt&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=41324>

- National Association of Independent Colleges and Universities

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>