

Thank you, Chair Gelser, Members of the Committee, I am Representative Lew Frederick, from North and Northeast Portland.

I sent everybody information about HB 4062 last week, and I'm here to highlight some of that information, answer questions and provide some more rationale for the bill. I do have one amendment in process, which I will explain, and there will be others in response to input from the Oregon Department of Education.

HB 4062 – Privacy and Security of Student Records:

Some of you may recall the end of the 2011 session when an education “package” was passed. To say that there was haste is an understatement. Many of the components were not vetted through this committee, or if they were, were not voted out of this committee. There was little if any policy deliberation on a very complicated bill. I've talked about what I think about that in other settings and in reference to other subjects.

Part of the education “reform” push of the past few years has involved the collection of data about kids. You might have seen some headlines today regarding tests for entering kindergarteners. They are given 60 seconds to identify as many letters as possible from a chart of 100 letters. Apparently Beaverton 5 year olds made it through about 25 letters on average. Three Oregonian reporters took the same test and made it through 50 – 65. Now, here's the thing. Who decided that this piece of information was a meaningful test of kindergarten readiness? What science is behind that, any? Or was a contract let to a vendor, and they developed a test, and now the kids have to take it, and we lament the sorry state of readiness of our young students. Is the science better for the rest of the test? I have no idea.

Now, here's the other thing. That piece of information is not written on a paper and used by the teacher to guide instruction, and it is not discarded when its usefulness, if any, expires. It is stored in an electronic database, and that little nugget of information about each kid is retained. Never mind that it might be meaningless. Never mind that folks who don't know better may attempt to interpret such a test in ways that the test itself does not support.

Now if I were to write the bill I really want to see passed, it would be to require that rigorous (note the word) standards of reliability and, more importantly, validity be required of any new program inflicted on our students and teachers. It would be to require that there be an answer to the question: “What does this have to do with teaching and learning?” before we invest scarce funds and even scarcer resources of time and attention on these activities. In the case of any testing regimen, we have to get answers to the question: “Do the results of these tests really mean what we are assuming they mean?” To answer that, you need field testing, and a variety of kinds of professional vetting.

I introduced this bill because both the technology to collect, store and share data about young people *and the drive to use it* are running ahead of appropriate safeguards and even running ahead of conscientious policy decisions. These programs are tied to their usefulness to current and future researchers. Ethical guidelines regarding research using human subjects do not fully account for the personal risks that arise from the collection and storage of personal information.

There is now a national database designed to gather test results, discipline records and personal information on students from the earliest age. We all know that boundaries of privacy and personal autonomy have already been breached in the electronic collection, storage and sharing of information about us all. The risk for children is far greater. Decisions we make now may determine whether today's third grader can ever shed the ups and downs of childhood. Risks to our children are potentially vast, while the benefits of this database remain nebulous.

For me there is a basic principle: Information should be gathered, stored and shared for the educational benefit of the student. While I understand and appreciate the drive to amass a trove of information for future research, I also believe that there must be ethical guidelines that prioritize the security of the individual. A person's privacy and autonomy are vital to his or her future well-being.

A number of issues remain unsettled:

- Who has access to that information?
- Who can correct information when it is wrong, and how can content be challenged?
- Can personal identifiers be reliably separated from stored information when it is shared?
- Will commercial interests gain access to the database for marketing or other purposes?

HB 4062 would give several common sense expectations the force of law, including:

- It will require a privacy risk assessment to be part of any proposal to expand student records or allow access by a third party.
- It will strengthen the requirements for appropriate standards for privacy and security of records, and especially for the personal identifying information associated with those records.
- It will require the Department of Education to adopt standards related to the collection, retention and security of student records and to provide technical assistance to educational institutions to help them comply with those standards.
- It will require that parents and legal guardians be allowed to view their children's records and challenge and request correction of incorrect information.
- It will prohibit disclosure of student personal identifying information to individuals who are not responsible for the student's educational program.
- It will require that student personal identifying information be removed from the record when it is no longer relevant for preparing the student's education program or supporting the student's application for employment or admission to a post-secondary educational program or institution.

These are just the highlights; there is additional detail in the bill.

A "permanent" student record used to be only as permanent as the paper it was written on and as accessible as the file cabinet it was stored in. Now, records are stored electronically, able to be transmitted instantly and stored indefinitely.

We should all be concerned about amassing data about young people, given the rapidly advancing technology for matching data with personal identifiers and using those

matches for purposes not contemplated when it was gathered. For example, should behavior records of a 7th grader bear on that person's future college admission or employment? (Oh sure, we were all angels at that age.) Or, should families be bombarded with targeted product ads based on data gleaned from combining student databases with other resources? The law currently provides no recourse to individuals and families that could be harmed this way. This bill simply codifies some basic preventive measures.

Now, it's interesting that having gone down this road as far as we have, it is suggested that this subject needs more study before we can enact safeguards. Meanwhile, as I said earlier, data collection, storage and sharing is running far ahead of policy. It seems to me that the study should have happened first, but it's too late for that.

It's also suggested that enacting the kinds of safeguards contained in this bill will endanger the longitudinal database, that it will endanger programs designed to provide data to researchers. Which should come first, the safety and security of student privacy or the desires of researchers? This concern suggests that the longitudinal database is incompatible with the basic common-sense safeguards included in this bill. If they are incompatible, which one should go? These programs did not come from the sky. They were created by human beings, and human beings can regulate them to protect our kids.

I have obtained one amendment, which you have in your packets. It adds a specific prohibition against using student records for sales, advertising or marketing purposes. We are studying suggestions from the Oregon Department of Education and if amendments result I will let you know as soon as possible.

Thank you for considering this bill. I think it is urgent and I hope you will act on it promptly.