

114TH CONGRESS
1ST SESSION

S. _____

To amend section 444 of the General Education Provisions Act in order to improve the privacy protections available to students and their parents, and for other purposes.

¶

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend section 444 of the General Education Provisions Act in order to improve the privacy protections available to students and their parents, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Privacy Pro-
5 tection Act”.

6 **SEC. 2. DEFINING STUDENT DATA.**

7 (a) DEFINITION.—Section 444(a) of the General
8 Education Provisions Act (commonly referred to as the

1 “Family Educational Rights and Privacy Act”) (20 U.S.C.
2 1232g) is amended—

3 (1) by striking paragraph (4) and inserting the
4 following:

5 “(4)(A) For the purposes of this section, the
6 term ‘student data’ means information about a stu-
7 dent collected and maintained by an educational
8 agency or institution, by a person or third party col-
9 lecting or maintaining such information through the
10 active intervention, facilitation, or authorization of
11 such agency or institution, or by a person or third
12 party acting for such agency or institution.

13 “(B) The term ‘student data’ does not include—

14 “(i) records of instructional, supervisory, and
15 administrative personnel and educational personnel
16 ancillary thereto which are in the sole possession of
17 the maker thereof and which are not accessible or
18 revealed to any other person except a substitute;

19 “(ii) records maintained by a law enforcement
20 unit of the educational agency or institution that
21 were created by that law enforcement unit for the
22 purpose of law enforcement;

23 “(iii) in the case of persons who are employed
24 by an educational agency or institution but who are
25 not in attendance at such agency or institution,

1 records made and maintained in the normal course
2 of business which relate exclusively to such person in
3 that person's capacity as an employee and are not
4 available for use for any other purpose; or

5 “(iv) records on a student who is eighteen years
6 of age or older, or is attending an institution of
7 postsecondary education, which are made or main-
8 tained by a physician, psychiatrist, psychologist, or
9 other recognized professional or paraprofessional
10 acting in his professional or paraprofessional capac-
11 ity, or assisting in that capacity, and which are
12 made, maintained, or used only in connection with
13 the provision of treatment to the student, and are
14 not available to anyone other than persons providing
15 such treatment, except that such records can be per-
16 sonally reviewed by a physician or other appropriate
17 professional of the student's choice.”; and

18 (2) in paragraph (5)(A), by striking “includes
19 the following” and inserting “consists of only the
20 following”.

21 (b) CONFORMING AMENDMENTS.—Section 444 of
22 such Act (20 U.S.C. 1232g), as amended by subsection
23 (a), is further amended—

24 (1) in subsection (a)—

25 (A) in paragraph (1)—

1 (i) in subparagraph (A), by striking
2 “educational records” and inserting “stu-
3 dent data”; and

4 (ii) in subparagraph (C)(ii), by strik-
5 ing “placed in the education records” and
6 inserting “obtained”; and

7 (B) in paragraph (2)—

8 (i) by striking “the records” each
9 place the term appears and inserting “the
10 data”; and

11 (ii) by striking “such records” each
12 place the term appears and inserting “such
13 data”;

14 (2) in subsection (b)—

15 (A) in paragraph (1)—

16 (i) in subparagraph (B), by striking
17 “the record” each place the term appears
18 and inserting “the data”;

19 (ii) in subparagraph (E), by striking
20 “whose records” each place the term ap-
21 pears and inserting “whose student data”;
22 and

23 (iii) in subparagraph (L), by striking
24 “such records” and inserting “such data”;

1 (B) in paragraph (2)(A), by striking
2 “records” each place the term appears and in-
3 serting “student data”; and

4 (C) in paragraph (4)(A), by striking “such
5 records” and inserting “such data”;

6 (3) in subsection (j)(1)(B), by striking “such
7 records” and inserting “such student data”;

8 (4) by striking “education records” each place
9 the term appears and inserting “student data”; and

10 (5) by striking “education record” each place
11 the term appears and inserting “student data”.

12 **SEC. 3. RELEASE OF PERSONALLY IDENTIFIABLE INFOR-**
13 **MATION.**

14 Section 444 of the General Education Provisions Act
15 (commonly referred to as the “Family Educational Rights
16 and Privacy Act”) (20 U.S.C. 1232g), as amended by sec-
17 tion 2, is further amended—

18 (1) in subsection (b)—

19 (A) in paragraph (1)—

20 (i) in subparagraph (A), by striking
21 “other school officials, including teachers”
22 and inserting “employees and other school
23 officials, including teachers, under the di-
24 rect control of”;

1 (ii) in subparagraph (C), by striking
2 “authorized representatives of” each place
3 the term appears and inserting “authorized
4 representatives under the direct control
5 of”;

6 (iii) by striking subparagraph (F);
7 and

8 (iv) by redesignating subparagraphs
9 (G) through (K) as subparagraphs (F)
10 through (J), respectively;

11 (B) in paragraph (2)—

12 (i) in the matter preceding subpara-
13 graph (A), by striking “any personally
14 identifiable information” through “direc-
15 tory information,” and inserting “any stu-
16 dent data, including personally identifiable
17 information (other than directory informa-
18 tion) that is not first aggregated,
19 anonymized, and de-identified”;

20 (ii) by striking subparagraph (A) and
21 inserting the following:

22 “(A) the educational agency or institution
23 meets the requirements of paragraph (8) with
24 respect to the student data, including providing
25 notice and obtaining parental consent; or”; and

1 (iii) in subparagraph (B), by striking
2 “(1)(J)” and inserting “(1)(I)”;

3 (C) in paragraph (3)—

4 (i) by striking “authorized representa-
5 tives of” and inserting “authorized rep-
6 resentatives under the direct control of”;

7 (ii) by inserting “administered by
8 State or local public educational agencies
9 or institutions” after “Federally-supported
10 education programs”; and

11 (iii) by inserting before the period at
12 the end the following: “: *Provided further,*
13 That notice is provided, and consent is ob-
14 tained, from the parents consistent with
15 paragraph (8)”;

16 (D) in paragraph (4)(B)—

17 (i) by inserting “and consistent with
18 the requirements of paragraph (8)” after
19 “student”;

20 (ii) by inserting “or paragraph (8)”
21 after “paragraph (2)(A)”;

22 (iii) by inserting “(as in effect on the
23 day before the date of enactment of the
24 Student Privacy Protection Act)” after
25 “paragraph (1)(F)”;

1 (E) in paragraph (5)—

2 (i) by inserting “administered by a
3 State or local public educational agency or
4 institution” after “supported education
5 program”; and

6 (ii) by striking “the proviso” and in-
7 serting “both provisos”; and

8 (F) by adding at the end the following:

9 “(7) NO APPENDING DATA.—

10 “(A) IN GENERAL.—No funds provided to
11 the Department or under any applicable pro-
12 gram may be provided to any educational agen-
13 cy or institution that appends any student data
14 with personally identifiable information ob-
15 tained from Federal or State agencies through
16 data matches.

17 “(B) FEDERAL PROHIBITION.—Notwith-
18 standing any other provision of law, the Sec-
19 retary shall not append any student data of a
20 student with personally identifiable information
21 obtained from Federal or State agencies
22 through data matches.

23 “(8) LIMITATIONS ON THIRD PARTY USE.—

24 Notwithstanding paragraph (1) or any other provi-
25 sion of this section (not including paragraph (6)), no

1 funds provided to the Department or under any ap-
2 plicable program may be provided to an educational
3 agency (including a State educational agency) or in-
4 stitution that allows any third party (including any
5 contractor or other person acting under direct con-
6 trol of the agency or institution) to access student
7 data of students, including personally identifiable in-
8 formation and directory information, unless—

9 “(A) the agency or institution receives con-
10 sent from the parents of the student for the
11 student data to be made available to the third
12 party;

13 “(B) prior to receiving the consent de-
14 scribed in subparagraph (A), the agency or in-
15 stitution provides the parents with notice, not
16 less than 30 days before the records would be
17 provided to such outside party if consent is ob-
18 tained, that informs the parent—

19 “(i) of the student data that would be
20 accessed;

21 “(ii) that the student data will only be
22 made available if the parent consents;

23 “(iii) that the parent have the ability,
24 under subsection (a), to access the student
25 data of their students held by the agency

1 or institution or outside party, and a de-
2 scription of the process to make correc-
3 tions for inaccurate data; and

4 “(iv) that the agency or institution
5 and the outside party are liable for any
6 violation of this section and that the rem-
7 edies described in subsection (k) are avail-
8 able;

9 “(C) the agency or institution, and the
10 third party, have in place methods sufficient to
11 ensure that a reasonable person could not use
12 any of the data provided to determine the iden-
13 tity of the student, by itself or when combined
14 with other publicly available information;

15 “(D) the agency or institution requires
16 that all student data remain the property of the
17 agency or institution and that any student data,
18 including data made available through the
19 Internet or data hosted by a third party service
20 provider, is destroyed when the individual is no
21 longer a student served by the agency or insti-
22 tution; and

23 “(E) the third party agrees, as a condition
24 of receiving such access, to be liable for any vio-

1 lation of this section, including civil liability
2 under subsection (k).

3 “(9) NO TRACKING OF STUDENTS.—

4 “(A) IN GENERAL.—No funds provided to
5 the Department or to an applicable program
6 may be used to track children or for career
7 tracking.

8 “(B) ONLY AGGREGATE DATA IN LONGITU-
9 DINAL DATA SYSTEMS.—Student data shall not
10 be used for or from State longitudinal data pro-
11 grams, including prekindergarten through grade
12 20 (‘P-20’) workforce programs, unless the stu-
13 dent data is first aggregated, anonymized, and
14 de-identified.

15 “(C) DEFINITIONS.—In this paragraph:

16 “(i) TRACK.—The term ‘track’ shall
17 mean to collect and maintain records of a
18 student’s activities through the student’s
19 educational career, beginning in preschool
20 and including postsecondary education,
21 and the student’s entrance into, and pro-
22 gression through, the workforce or the
23 military.

24 “(ii) CAREER TRACKING.—The term
25 ‘career tracking’ shall mean any effort to

1 obligate an elementary school or secondary
2 school student to involuntarily select a ca-
3 reer, career interest, employment goals, or
4 related job training via any curriculum, in-
5 struction, employment-related activity, sur-
6 vey, test, assessment, or data collection.

7 “(10) RULES OF CONSTRUCTION.—

8 “(A) APPLICABILITY TO FEDERAL GOV-
9 ERNMENT.—Nothing in this section shall be
10 construed to allow the Secretary, the Attorney
11 General, or the head of any other Federal agen-
12 cy to provide any outside party access to stu-
13 dent data, or personally identifiable information
14 in student data, that has not first been aggre-
15 gated, anonymized, and de-identified.

16 “(B) NO DATA COLLECTION.—Nothing in
17 this section shall be construed to authorize the
18 collection, storage, sharing, or use, in any man-
19 ner, of student data, including personally iden-
20 tifiable information of students, for the develop-
21 ment or improvement of products or services,
22 unless the student data has first been aggre-
23 gated, anonymized, and de-identified.

24 “(C) NO NATIONAL DATABASE.—Nothing
25 in this section shall be construed to authorize

1 the collection, storage, sharing, or use, in any
2 manner, of student data, including personally
3 identifiable information, to support or inform a
4 national or interstate database of student data
5 or the linking of State longitudinal databases,
6 unless the student data has been aggregated,
7 anonymized, and de-identified.”.

8 **SEC. 4. REQUIRING PARENTAL CONSENT TO RELEASE**
9 **RECORDS OF OTHER STUDENTS.**

10 Section 444(a) of the General Education Provisions
11 Act (20 U.S.C. 1232g(a)), as amended by section 2, is
12 further amended—

13 (1) in paragraph (1)—

14 (A) in subparagraph (A), by striking “stu-
15 dents who are or have been in attendance at a
16 school of such agency or at such institution, as
17 the case may be,” and inserting “students for
18 whom the agency or institution maintains stu-
19 dent data”; and

20 (B) in subparagraph (B), by inserting “,
21 or for whom the agency or institution maintains
22 student data” before “that is subject”;

23 (2) in paragraph (2), by striking “who are or
24 have been in attendance at a school of such agency

1 or at such institution” and inserting “for whom the
2 agency or institution maintains student data”;

3 (3) in paragraph (5)(B), by striking “attending
4 the institution or agency” and inserting “for whom
5 the agency or institution maintains student data”;
6 and

7 (4) in paragraph (6), by striking “, but does
8 not include a person who has not been in attendance
9 at such agency or institution”.

10 **SEC. 5. REMEDIES.**

11 Section 444 of the General Education Provisions Act
12 (20 U.S.C. 1232g), as amended by sections 2, 3, and 4,
13 is further amended by adding at the end the following:

14 “(k) CIVIL LIABILITY.—

15 “(1) IN GENERAL.—

16 “(A) AGENCIES, INSTITUTIONS, AND CON-
17 TRACTORS.—As a condition of receiving any
18 funds provided to the Department or under any
19 applicable program, an educational agency or
20 institution, and any third party that collects,
21 maintains, or otherwise obtains access to stu-
22 dent data through such agency or institution,
23 that fails to comply with any requirement im-
24 posed under this section with respect to any in-

1 dividual shall be liable to that person in the
2 amount determined under paragraph (2).

3 “(B) FEDERAL GOVERNMENT LIABILITY.—
4 Any Federal agency that fails to comply with
5 any requirement imposed under this section
6 with respect to any individual shall be liable to
7 that person in the amount determined under
8 paragraph (2).

9 “(2) AMOUNT OF AWARD.—

10 “(A) INDIVIDUAL ACTION.—In an indi-
11 vidual action, the sum awarded for liability
12 under paragraph (1) is equal to—

13 “(i) in the case of a first violation, an
14 amount of not less than \$1,000;

15 “(ii) in the case of a second violation
16 by the same person involving the student
17 data and privacy of the same student, an
18 amount of not less than than \$5,000; and

19 “(iii) in the case of a third or any
20 subsequent violation by the same person
21 involving the student data and privacy of
22 the same student, an amount of not less
23 than \$10,000.

24 “(B) INDIVIDUAL VIOLATION.—For pur-
25 poses of this subsection, each violation of this

1 section that involves different student data of
2 an individual, or a different student, shall be
3 considered a separate violation.

4 “(3) COSTS AND ATTORNEY FEES.—In the case
5 of any successful action to enforce liability under
6 paragraph (1), the defendant shall be liable for the
7 costs of the action and reasonable attorney fees as
8 determined by the court.”.

9 **SEC. 6. PROHIBITION ON PSYCHOLOGICAL TESTING.**

10 Section 445 of the General Education Provisions Act
11 (20 U.S.C. 1232h) is amended—

12 (1) by redesignating subsections (d) through (f)
13 as subsections (f) through (h), respectively;

14 (2) by inserting after subsection (e) the fol-
15 lowing:

16 “(d) PROHIBITION ON PSYCHOLOGICAL TESTING.—

17 “(1) DEFINITIONS.—In this section:

18 “(A) AFFECTIVE COMPUTING.—The term
19 ‘affective computing’ means systems and de-
20 vices that can or attempt to recognize, inter-
21 pret, process, or simulate aspects of human
22 feelings or emotions.

23 “(B) INTERPERSONAL RESOURCES OR
24 INTERPERSONAL SKILLS.—The term ‘inter-
25 personal resources’ or ‘interpersonal skills’

1 means non-cognitive emotional and psycho-
2 logical characteristics and attributes and skills
3 used to manage relationships and interactions
4 between or among individuals.

5 “(C) INTRAPERSONAL RESOURCES OR
6 INTRAPERSONAL SKILLS.—The term
7 ‘intrapersonal resources’ or ‘intrapersonal skills’
8 means non-cognitive emotional and psycho-
9 logical characteristics and attributes used to
10 manage emotions and attitudes within an indi-
11 vidual.

12 “(D) PREDICTIVE MODELING.—The term
13 ‘predictive modeling’ means the use of edu-
14 cational data-mining methods to make pre-
15 dictions about future behaviors or performance.

16 “(E) PROCESS.—The term ‘process’ or
17 ‘processing’ means to use, access, manipulate,
18 scan, modify, transform, disclose, store, trans-
19 mit, transfer, retain, aggregate, or dispose of
20 student or teacher data.

21 “(F) PSYCHOLOGICAL RESOURCES.—The
22 term ‘psychological resources’ means non-cog-
23 nitive, emotional characteristics, attributes, and
24 skills, including mindsets, learning strategies,

1 and effortful control, used by an individual to
2 address or manage various life situations.

3 “(2) IN GENERAL.—Notwithstanding any other
4 provision of law, no funds provided to the Depart-
5 ment or Federal funds provided under any applica-
6 ble program shall be spent to support any survey or
7 academic assessment allowing any of the following
8 types of data collection via assessments or any other
9 means, including digitally:

10 “(A) Any data collected via affective com-
11 puting, including analysis of facial expressions,
12 EEG brain wave patterns, skin conductance,
13 galvanic skin response, heart-rate variability,
14 pulse, blood volume, posture, and eye-tracking.

15 “(B) Any data (including any resulting
16 from national or State assessments) that meas-
17 ure psychological resources, mindsets, learning
18 strategies, effortful control, attributes, disposi-
19 tions, social skills, attitudes, intrapersonal re-
20 sources, or any other type of social, emotional,
21 or psychological parameter.

22 “(C) Any data collected through predictive
23 modeling to be used to detect behaviors, beliefs,
24 or value systems, or for predicting or fore-
25 casting student outcomes.

1 “(D) Any type of psychological data, in-
2 cluding assessment of non-cognitive skills or at-
3 tributes, psychological resources, mindsets,
4 learning strategies, effortful control, attitudes,
5 dispositions, social skills, or other interpersonal
6 or intrapersonal resources collected via any na-
7 tional or State student assessment.

8 “(3) SPECIAL RULE.—Paragraph (2) shall not
9 apply to an applicable program carried out or fund-
10 ed under the Individuals with Disabilities Education
11 Act if the data collection is required under such Act.

12 “(4) NO NATIONAL ASSESSMENT USING PSY-
13 CHOLOGICAL DATA.—No funds provided to the De-
14 partment or to an applicable program may be used
15 to pilot test, field test, implement, administer, or
16 distribute in any way any federally sponsored na-
17 tional assessment collecting any psychological data
18 or any federally sponsored research on social-emo-
19 tional data in education.

20 “(e) VIDEO MONITORING AND COMPUTER SURVEIL-
21 LANCE PROTECTIONS.—

22 “(1) PROTECTIONS FOR VIDEO MONITORING.—

23 “(A) ELEMENTARY SCHOOLS AND SEC-
24 ONDARY SCHOOLS.—No funds provided to the
25 Department or under any applicable program

1 shall be made available to any public elemen-
2 tary school or secondary school served by an
3 educational agency receiving funds under any
4 eligible program that conducts video monitoring
5 of classrooms in the school, for any purpose, in-
6 cluding for teacher evaluation, without the ap-
7 proval of the local educational agency after a
8 public hearing and the written consent of the
9 teacher and the parents of all students in the
10 classroom.

11 “(B) OTHER AGENCIES AND INSTITU-
12 TIONS.—No funds provided to the Department
13 or under any applicable program shall be made
14 available to any educational agency or institu-
15 tion not covered under subparagraph (A) that
16 conducts video monitoring of classrooms in a
17 school or institution, for any purpose, including
18 for teacher evaluation, without a public hearing
19 and the written consent of the teacher, and of
20 the parents of all students in the classroom.

21 “(2) PROTECTIONS FOR COMPUTER CAMERA
22 SURVEILLANCE.—

23 “(A) ELEMENTARY SCHOOLS AND SEC-
24 ONDARY SCHOOLS.—No funds provided to the
25 Department under any applicable program shall

1 be made available to any public elementary
2 school or secondary school that supplies,
3 through the school to a teacher or student, a
4 computing device on which remote camera sur-
5 veillance software has been installed, without
6 first obtaining the approval of the local edu-
7 cational agency after a public hearing. Any
8 such elementary school or secondary school that
9 provides computing devices to teachers or stu-
10 dents shall adopt a policy prohibiting the use of
11 remote camera surveillance software on a school
12 supplied computing device without the written
13 consent of the teacher and the parent of each
14 affected student.

15 “(B) OTHER AGENCIES AND INSTITU-
16 TIONS.—No funds under any applicable pro-
17 gram shall be made available to any educational
18 agency or institution not covered under sub-
19 paragraph (A) that supplies, through the school
20 to a student or teacher, a computing device on
21 which remote camera surveillance software has
22 been installed without first providing a public
23 hearing and adopting a policy prohibiting the
24 use of remote camera surveillance software on
25 an institution-supplied computing device with-

1 out the written consent of the teacher and the
2 parent of each affected student.

3 “(3) PERMISSION AND CONSENT.—For the pur-
4 poses of this subsection, whenever a student has at-
5 tained eighteen years of age, or is attending an insti-
6 tution of postsecondary education, the permission or
7 consent required of and the rights accorded to the
8 parents of the student shall thereafter only be re-
9 quired of and accorded to the student.

10 “(4) DEFINITIONS.—In this subsection, the
11 term ‘educational agency or institution’ has the
12 meaning given the term in section 444.”

13 **SEC. 7. PROHIBITION ON COLLECTING CERTAIN PRIVATE**
14 **INFORMATION.**

15 Section 445 of the General Education Provisions Act
16 (20 U.S.C. 1232h) is amended—

17 (1) by striking subsection (b) and inserting the
18 following:

19 “(b) Neither the Secretary nor any educational agen-
20 cy or institution receiving assistance under any applicable
21 program shall administer any student survey, assessment,
22 analysis, evaluation, or similar instrument that solicits in-
23 formation about the student or the student’s family con-
24 cerning the following:

25 “(1) Political affiliations or beliefs.

1 “(2) Mental or psychological problems, psycho-
2 logical resources, mindsets, learning strategies,
3 effortful control, attributes, dispositions, social skills,
4 attitudes, or intrapersonal resources (as defined in
5 subsection (d)(1)).

6 “(3) Sexual behavior or attitudes.

7 “(4) Illegal, antisocial, self-incriminating, or de-
8 meaning behavior.

9 “(5) Critical appraisals of another individual
10 with whom a student has a close relationship.

11 “(6) Legally recognized privileged or analogous
12 relationships, such as those with a lawyer, physician,
13 or member of the clergy.

14 “(7) Religious practices, affiliations, or beliefs.

15 “(8) Personal or family gun ownership.

16 “(9) Income or other income-related informa-
17 tion except that required by law to determine eligi-
18 bility to participate in or receive financial assistance
19 under a program.”; and

20 (2) in subsection(c)(1)—

21 (A) by striking subparagraph (B);

22 (B) by redesignating subparagraphs (C)
23 through (F) as subparagraphs (B) through (E),
24 respectively; and

1 (C) in subparagraph (E)(i), as redesign-
2 nated by subparagraph (B), by striking “sub-
3 paragraph (E)” and inserting “subparagraph
4 (D)”.

5 **SEC. 8. SEVERABILITY.**

6 If any provision of this Act or an amendment made
7 by this Act, or the application of the provision to any per-
8 son or circumstance, is held to be unconstitutional, the
9 remainder of this Act and the amendments made by this
10 Act, and the application of the provisions of this Act and
11 the amendments made by this Act to any other person
12 or circumstance, shall not be affected thereby.