IN THE SENATE

SENATE BILL NO. 1033

BY EDUCATION COMMITTEE

*1*                                    AN ACT
*2*  RELATING TO EDUCATIONAL DATA SYSTEM SECURITY; AMENDING SECTION 33-120,
*3*      IDAHO CODE, TO AUTHORIZE THE STATE BOARD OF EDUCATION TO ADOPT RULES
*4*      RELATING TO THE EDUCATIONAL DATA SYSTEM; AND AMENDING SECTION 33-133,
*5*      IDAHO CODE, TO REVISE A DEFINITION, TO CLARIFY THE CONDITIONS UNDER
*6*      WHICH STUDENT DATA IS PERSONALLY IDENTIFIABLE, TO SPECIFY THE STORAGE
*7*      OF STUDENT DATA, TO PROVIDE THAT THE STATE BOARD OF EDUCATION AND THE
*8*      DEPARTMENT OF EDUCATION SHALL ENSURE THE SECURITY OF THE EDUCATIONAL
*9*      DATA SYSTEM AND TO MAKE TECHNICAL CORRECTIONS.

*10*  Be It Enacted by the Legislature of the State of Idaho:

*11*      SECTION 1.  That Section 33-120, Idaho Code, be, and the same is hereby
*12*  amended to read as follows:

*13*      33-120.  UNIFORM REPORTING. (1) The state superintendent of public in-
*14*  struction shall prescribe forms and format for uniform accounting for finan-
*15*  cial and statistical reports and performance measurements to provide con-
*16*  sistent and uniform reporting by school districts.
*17*      (2)  The state board of education may adopt rules pursuant to the pro-
*18*  visions of chapter 52, title 67, Idaho Code, and under authority of section
*19*  33-105, Idaho Code, to provide for and implement a student information man-
*20*  agement system and an educational data system, as defined in section 33-133,
*21*  Idaho Code.  Such rules may include provisions for actions when data is will-
*22*  fully misreported.  All longitudinal educational data will be housed and
*23*  maintained in the educational data system.

*24*      SECTION 2.  That Section 33-133, Idaho Code, be, and the same is hereby
*25*  amended to read as follows:

*26*      33-133.  DEFINITIONS -- STUDENT DATA -- USE AND LIMITATIONS -- PENAL-
*27*  TIES. (1)  As used in this act, the following terms shall have the following
*28*  meanings:
*29*      (a)  "Agency" means each state board, commission, department, office or
*30*      institution, educational or otherwise, of the state of Idaho.  State
*31*      agency shall also mean any city, county, district or other political
*32*      subdivision of the state.
*33*      (b)  "Aggregate data" means data collected and/or reported at the group,
*34*      cohort or institutional level.  Aggregate data shall not include per-
*35*      sonally identifiable information.  The minimum number of students shall
*36*      be determined by the state board of education.
*37*      (c)  "Board" means the state board of education.
*38*      (d)  ~~"Data system" means the state's elementary, secondary and postsec-~~
*39*      ~~ondary longitudinal data systems.~~
*40*      ~~(e)~~ "Department" means the state department of education.

1  (fe)  "District" or "school district" means an Idaho public school dis-
2  trict and shall also include Idaho public charter schools.
3  (f)  "Educational data system" means the state's elementary, secondary
4  and postsecondary longitudinal data systems.
5  (g)  "Parent" means parent, parents, legal guardian or legal guardians.
6  (h)  "Personally identifiable data," "personally identifiable student
7  data" or "personally identifiable information" includes, but is not
8  limited to:  the student's name; the name of the student's parent or
9  other family members; the address of the student or student's family;
10  a personal identifier, such as the student's social security number,
11  student education unique identification number or biometric record;
12  other indirect identifiers, such as the student's date of birth, place
13  of birth and mother's maiden name; and other information that, alone or
14  in combination, is may be linked or linkable to a specific student that
15  would allow a reasonable person in the school community, who does not
16  have personal knowledge of the relevant circumstances, to identify the
17  student with reasonable certainty, or information requested by a person
18  who the educational agency or institution reasonably believes knows the
19  identity of the student to whom the education record relates.  Student
20  data, when reported in the aggregate that cannot be tied back to an in-
21  dividual student, is not personally identifiable data or personally
22  identifiable student data.
23  (i)  "Provisional student data" means new student data proposed for in-
24  clusion in the data system.
25  (j)  "Student data" means data collected and/or reported at the individ-
26  ual student level included in a student's educational record.
27       (i)  "Student data" includes:  (1) state and national assess-
28       ment results, including information on untested public school
29       students; (2) course taking and completion, credits earned and
30       other transcript information; (3) course grades and grade point
31       average; (4) date of birth, grade level and expected graduation
32       date/graduation cohort; (5) degree, diploma, credential attain-
33       ment and other school exit information such as general educational
34       development and drop-out data; (6) attendance and mobility; (7)
35       data required to calculate the federal four (4) year adjusted
36       secondary cohort graduation rate, including sufficient exit
37       information; (8) discipline reports limited to objective infor-
38       mation sufficient to produce the federal annual incident reports,
39       children with disabilities disciplinary reports and discipline
40       reports, including students involved with firearms; (9) reme-
41       diation; (10) special education data; (11) demographic data and
42       program participation information; and (12) files, documents,
43       images or data containing a student's educational record that are
44       stored in or transmitted through a cloud computing service.
45       (ii) A student's educational record shall not include: (1) juve-
46       nile delinquency records and criminal records unless required in
47       paragraph (k) of this subsection; (2) medical and health records;
48       (3) student social security number; (4) student biometric infor-
49       mation; (5) gun ownership records; (6) sexual orientation; (7) re-
50       ligious affiliation; (8) except for special needs and exceptional

<sub>1</sub> students, any data collected pursuant to a statewide assessment
<sub>2</sub> via affective computing, including analysis of facial expres-
<sub>3</sub> sions, EEG brain wave patterns, skin conductance, galvanic skin
<sub>4</sub> response, heart rate variability, pulse, blood volume, posture
<sub>5</sub> and eye tracking, any data that measures psychological resources,
<sub>6</sub> ~~mind sets~~ mindsets, effortful control, attributes, dispositions,
<sub>7</sub> social skills, attitudes or intrapersonal resources.
<sub>8</sub> (iii) All longitudinal student data shall be stored and maintained
<sub>9</sub> in the educational data system.
<sub>10</sub> (k)  "Student educational record" means all information directly re-
<sub>11</sub> lated to a student and recorded and kept in the educational data system
<sub>12</sub> as that term is defined in this section.  Provided however, that the
<sub>13</sub> following shall not be kept as part of a student's permanent educational
<sub>14</sub> record: daily assignments, homework, reports, chapter tests or similar
<sub>15</sub> assessments or other schoolwork that may be considered daily or weekly
<sub>16</sub> work.  A student educational record may include information considered
<sub>17</sub> to be personally identifiable.
<sub>18</sub> (l)  "Student education unique identification number" means the unique
<sub>19</sub> student identifier assigned by the state to each student that shall not
<sub>20</sub> be or include the social security number of a student in whole or in
<sub>21</sub> part.
<sub>22</sub> (m)  "Violation" means an act contrary to the provisions of this section
<sub>23</sub> that materially compromises the security, confidentiality or integrity
<sub>24</sub> of personally identifiable data of one (1) or more students and that re-
<sub>25</sub> sults in the unauthorized release or disclosure of such data.
<sub>26</sub> (2)  Unless otherwise provided for in this act, the executive office of
<sub>27</sub> the state board of education shall be the entity responsible for implement-
<sub>28</sub> ing the provisions of this act.  All decisions relating to the collection and
<sub>29</sub> safeguarding of student data shall be the responsibility of the executive
<sub>30</sub> office of the state board of education.
<sub>31</sub> (3)  The state board of education shall:
<sub>32</sub> (a)  Create, publish and make publicly available a data inventory and
<sub>33</sub> dictionary or index of data elements with definitions of individual
<sub>34</sub> student data fields currently in the ~~student~~ educational data system
<sub>35</sub> including:
<sub>36</sub> (i)  Any individual student data required to be reported by state
<sub>37</sub> and federal education mandates;
<sub>38</sub> (ii)  Any individual student data that has been proposed for inclu-
<sub>39</sub> sion in the ~~student~~ educational data system with a statement re-
<sub>40</sub> garding the purpose or reason for the proposed collection; and
<sub>41</sub> (iii)  Any individual student data collected or maintained with no
<sub>42</sub> current purpose or reason.
<sub>43</sub> No less frequently than annually, the state board of education shall up-
<sub>44</sub> date the data inventory and index of data elements provided for in this
<sub>45</sub> ~~subsection~~ paragraph.
<sub>46</sub> (b)  Develop, publish and make publicly available policies and proce-
<sub>47</sub> dures to comply with the federal family educational rights and privacy
<sub>48</sub> act (FERPA) and other relevant privacy laws and policies including, but
<sub>49</sub> not limited to, the following:

(i) Access to student data in the ~~student~~ <u>educational</u> data system shall be restricted to: (1) the authorized staff of the state board of education and the state department of education and the board's and the department's vendors who require such access to perform their assigned duties; (2) the district and the district's private vendors who require access to perform their assigned duties and public postsecondary staff who require such access to perform their assigned duties; (3) students and their parents or legal guardians; and (4) the authorized staff of other state agencies in this state as required by law and/or defined by interagency data-sharing agreements. All such data-sharing agreements shall be summarized in a report compiled by the state board of education and submitted no later than January 15 of each year to the senate education committee and the house of representatives education committee;

(ii) Provide that public reports or responses to record requests shall include aggregate data only as that term is defined in subsection (1) of this section. <u>Multiple requests from the same individual or entity for aggregated student data that, when evaluated alone is not considered as personally identifiable data but when combined could be used to identify a student, are subject to the same restrictions as requests for personally identifiable data;</u>

(iii) Develop criteria for the approval of research and data requests from state and local agencies, the state legislature, researchers and the public: (1) unless otherwise approved by the state board of education, student data maintained shall remain confidential; (2) unless otherwise approved by the state board of education, released student data in response to research and data requests may include only aggregate data; and (3) any approval of the board to release personally identifiable student data shall be subject to legislative approval prior to the release of such information;

(iv) Ensure that any contract entered into by the state board of education or the state department of education includes provisions requiring and governing data destruction dates and specific restrictions on the use of data;

(v) Provide for notification to students and parents regarding their rights under federal and state law; and

(vi) Ensure that all school districts, primary schools, secondary schools and other similar institutions entering into contracts that govern databases, online services, assessments, special education or instructional supports with private vendors shall include in each such contract a provision that private vendors are permitted to use aggregated data~~,~~ or an individual student's data for secondary uses, but only if the vendor discloses in clear detail the secondary uses and receives written permission from the student's parent or legal guardian. The contract shall also include either of the following: (1) a prohibition on any secondary uses of student data by the private vendor including, but not limited to, sales, marketing or advertising, but permitting the

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*1* private vendor to process or monitor such data solely to provide
*2* and maintain the integrity of the service; or (2) a requirement
*3* that the private vendor disclose in detail any secondary uses of
*4* student data including, but not limited to, sales, marketing or
*5* advertising, and the board shall obtain express parental consent
*6* for those secondary uses prior to deployment of the private ven-
*7* dor's services under the contract.

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*8* The state board of education and the state department of education shall
*9* ensure that any and all private vendors employed or otherwise engaged
*10* by the board or the department shall comply with the provisions of this
*11* section. Any person determined, in either a civil enforcement action
*12* initiated by the board or initiated by the department or in a court ac-
*13* tion initiated by an injured party, to have violated a provision of this
*14* section or any rule promulgated pursuant to this section shall be liable
*15* for a civil penalty not to exceed fifty thousand dollars ($50,000) per
*16* violation. In the case of an unauthorized release of student data, the
*17* state board of education or the state department of education shall no-
*18* tify the parent or student of the unauthorized release of student data
*19* that includes personally identifiable information in a manner consis-
*20* tent with the provisions of section 28-51-105, Idaho Code.
*21* (c) Unless otherwise approved by the state board of education, any data
*22* deemed confidential pursuant to this act shall not be transferred to any
*23* federal, state or local agency or other organization or entity outside
*24* of the state of Idaho, with the following exceptions:

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*25* (i) A student transfers out of state or a school or district seeks
*26* help with locating an out-of-state transfer;
*27* (ii) A student leaves the state to attend an out-of-state institu-
*28* tion of higher education or training program;
*29* (iii) A student voluntarily participates in a program for which
*30* such a data transfer is a condition or requirement of participa-
*31* tion;
*32* (iv) The state board of education or the state department of ed-
*33* ucation may share such data with a vendor to the extent it is nec-
*34* essary as part of a contract that governs databases, online ser-
*35* vices, assessments, special education or instructional supports
*36* with a vendor;
*37* (v) Pursuant to a written agreement between the two (2) school
*38* districts, where a student transfers from an Idaho district abut-
*39* ting upon another state to the nearest appropriate district in
*40* such neighboring state in accordance with the provisions of sec-
*41* tion 33-1403, Idaho Code; or
*42* (vi) A student is classified as "migrant" for reporting purposes
*43* as required by the federal government in order to assure link-
*44* age between the various states of migrant students' educational
*45* records;

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*46* (d) Develop a detailed data security plan that includes:

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*47* (i) Guidelines for authorizing access to ~~the~~ student data in the
*48* educational data system and to individual student data including
*49* guidelines for authentication of authorized access;

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1          (ii)  Guidelines relating to administrative safeguards providing
2          for the security of electronic and physical data; such guidelines
3          should include provisions relating to data encryption as well as
4          staff training to better ensure the safety and security of data;
5          (iii) Privacy compliance standards;
6          (iv)  Privacy and security audits;
7          (v)   Breach planning, notification and procedures; and
8          (vi)  Data retention and disposition policies;
9     (e)  Ensure routine and ongoing compliance with FERPA, other relevant
10    privacy laws and policies, and the privacy and security policies and
11    procedures developed under the authority of this act, including the
12    performance of compliance audits;
13    (f)  Ensure that any contracts that govern databases, online services,
14    assessments or instructional supports that include student data and are
15    outsourced to private vendors, include express provisions that safe-
16    guard privacy and security, contain the restrictions on secondary uses
17    of student data described in subsection (3) paragraph (b)(vi) of this
18    subsection, provides for data destruction, including a time frame for
19    data destruction, and includes penalties for noncompliance with this
20    paragraph; and
21    (g)  Notify the governor and the legislature annually of the following:
22         (i)  New student data proposed for inclusion in the state student
23         educational data system: (1) any new student data collection pro-
24         posed by the state board of education becomes a provisional re-
25         quirement to allow districts and their local data system vendors
26         the opportunity to meet the new requirement; and (2)  the state
27         board of education must submit any new provisional student data
28         collection to the governor and the legislature for their approval
29         within one (1) year in order to make the new student data a per-
30         manent requirement through the administrative rules process. Any
31         provisional student data collection not approved by the governor
32         and the legislature by the end of the next legislative session ex-
33         pires and must be deleted and no longer collected;
34         (ii)  Changes to existing data collections required for any rea-
35         son, including changes to federal reporting requirements made by
36         the U.S. department of education;
37         (iii)  An explanation of any exceptions granted by the state
38         board of education in the past year regarding the release or
39         out-of-state transfer of student data;
40         (iv)  The results of any and all privacy compliance and security
41         audits completed in the past year.  Notifications regarding pri-
42         vacy compliance and security audits shall not include any infor-
43         mation that would pose a security threat to the state educational
44         data system or to local student information systems or to the se-
45         cure transmission of data between state and local systems by ex-
46         posing vulnerabilities; and
47         (v)  Data collected specific to a grant program where such data is
48         not otherwise included in student data.
49    (4)  The state board of education shall adopt rules to implement the pro-
50    visions of this act.
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1    (5) Upon the effective date of this act, any existing collection of stu-
2 dent data in the <u>educational</u> data system shall not be considered a new stu-
3 dent data collection in accordance with this section.
4    (6) Unless otherwise prohibited by law or court order, school districts
5 must provide parents or guardians with copies of all of their child's educa-
6 tional records, upon request, if such child has not attained the age of eigh-
7 teen (18) years.
8    (7) The state board of education shall develop a model policy for school
9 districts and public charter schools that will govern data collection, ac-
10 cess, security and use of such data. The model policy shall be consistent
11 with the provisions of this act. In order to assure that student educa-
12 tional information is treated safely and securely and in a consistent manner
13 throughout the state, each district and public charter school shall adopt
14 and implement the model policy. The state department of education shall
15 provide outreach and training to the districts and public charter schools
16 to help implement the policy. A current copy of such policy shall be posted
17 to the school district's website. Any district or public charter school
18 that fails to adopt, implement and post the policy where any inappropriate
19 release of data occurs shall be liable for a civil penalty not to exceed fifty
20 thousand dollars ($50,000). Such civil penalty may be imposed per viola-
21 tion. The method of recovery of the penalty shall be by a civil enforcement
22 action brought by the state board of education, with the assistance of the
23 office of the state attorney general, in the district court in and for the
24 county where the violation occurred. All civil penalties collected under
25 this section shall be paid into the general fund of the state.
26    <u>(8) The state board of education and the department of education shall</u>
27 <u>ensure that the educational data system is maintained securely at all times</u>
28 <u>and that data security and encryption practices are maintained.</u>