

Bill No.: ☒ [Summary](#) ☒ [Actions](#) ☒ [Votes](#) ☒ [Memo](#) ☒ [Text](#)**A08474 Summary:**

BILL NO A08474

SAME AS Same as S 2357-B

SPONSOR Rosenthal (MS)

COSPNSR Nolan

MLTSPNSR

Add S3212-b, Ed L

Requires notification of parents when student directory personally identifiable information is released to third parties; provides an opportunity to opt out.

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BILL NO A08474

06/17/2011 referred to education

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There are no votes for this bill in this legislative session.

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BILL NUMBER:A8474

TITLE OF BILL: An act to amend the education law, in relation to the release of personally identifiable student information by school districts

PURPOSE OR GENERAL IDEA OF BILL: To enhance privacy protections to students' personally identifiable student information contained in student education records maintained by schools and school districts and place additional restrictions on the release of personally identifiable student information.

SUMMARY OF SPECIFIC PROVISIONS: The Education Law is amended by adding a new section 3212-b to describe the lawful and unlawful dissemination of disclosable directory information and personally identifiable student information. This new section defines, under this act, student; school; disclosable directory information (DDI); and personally identifiable student information (PISI).

Subsection 2 stipulates the legal dissemination of disclosable directory

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information and the provisions for the parents or student in attendance from opting-out of the dissemination of such information, and the prohibition of the dissemination of personally identifiable student information, unless the school receives the affirmative consent to do so from the parent or student in attendance.

Disclosable Directory Information (DDI). The dissemination of a student's educational record within the school district is not restricted, and will comport with existing laws and regulations within said school district. A school district may disseminate students' directory information to the parent or student in attendance, and any educational agency, organization, or institution; and a school district may disseminate students' directory information to a school club, newspaper, yearbook, honor roll, and the like, unless the parent or student in attendance prohibits the school district from doing so.

Personally Identifiable Student Information (PISI). A school district may only distribute this information with the affirmative consent of the parent or student in attendance. If a parent or student grants the affirmative consent, the school may disseminate PISI to: another parent or student in attendance at the school; to non-profit that seeks the information for a specific purpose deemed to be beneficial for the student, and that has not violated the disclosure procedures stipulated in this section. If the third party violates the wishes of the custodial parent or student over the age of 18, it is prohibited from receiving this information for a period of five years.

Furthermore, even with the affirmative consent of the parent or student in attendance, the school is prohibited from disseminating students' PISI to a third party for profit-making purposes, such as for marketing products or services, and selling the information for commercial purposes/

Subsection 3 outlines the procedures for school districts notification of parents or students of their rights under this bill. To achieve active parental consent, within the first week of each new school year, the school district must issue a public notice, include in the student handbook, and send home with the student, information stipulating the disclosure procedures for the DDI and PISI. The disclosure information shall consist of the definition of disclosable directory information and personally identifiable student information as defined in this act; the procedures for obtaining affirmative consent for prohibiting the school district from disseminating the student's DDI to a third party for non-profit purposes; the procedures for obtaining affirmative consent for authorizing, the school district to disseminate the student's PISI to a third party for non-profit purposes.

If the school district does not receive a response from the parent or student 30 days of the dissemination of the disclosure information notice, the school district will operate under the premise that: (i) The parent or student did not opt-out, thus allowing the school district to disseminate the DDI to a third party for non-profit purposes; and (ii) the parent or student did not opt-in, thus prohibiting the school district from disseminating the PISI to a third party for non-profit purposes

Subsection 4 states that the new law shall not limit an employee of the board of education, state, court, of federal government from public school records purely for administrative purposes. Subsection 5 provides for exemptions with regard to military recruitment, in order to comply with federal law.

Section 2 of the bill sets the effective date.

JUSTIFICATION: New York has the opportunity to enhance and strengthen privacy protections for its students, which is especially critical as personally identifiable information will be digitized and shared electronically to audit and evaluate state and local education programs and to support the Statewide Longitudinal Data Systems. This makes data

security and student safety of paramount concern and the State has an interest to ensure the disclosure of students' personally identifiable information meets the standards of the Fair Information Practice Principles, as outlined by the Federal Trade Commission: notice/awareness, choice/consent, access/participation, integrity/security, and enforcement/redress.

While FERPA protects student information privacy it does not go far enough. nor does it adequately address the privacy issues of the electronic age and the capacity of marketers and other commercial enterprises to capture, use, and re-sell student information. Even with privacy controls in place, it is also far too easy for individuals to get a hold of student information and use it for illegal purposes, including identity theft, child abduction in custody battles, and domestic violence.

Therefore, this proposed legislation will enhance the protection to New York students and their families by stipulating that a student's personally identifiable information will only be disclosed to a third party for non-profit purposes with the consent from the parent or student, if the student is over age 18. Further, directory information, which can be disclosed under current law, may be restricted at the request of a parent or student over the age of 18. Lastly, this bill further enhances privacy by completely prohibiting the disclosure of directory information or personally identifiable information to a third party for profit-making purposes.

This legislation will give parents and students greater control over disclosure of personally identifiable information to third parties. It will protect students from their personal information being used by marketers who re-sell their information in secondary markets. The sophisticated electronic systems used to identify and breach the privacy of individuals should not have access to the personally identifiable information of vulnerable students. This added protection to New York students would protect them from opportunistic marketers and from identity theft.

Schools have been found to have varying degrees of conformance with the basic FERPA privacy requirements. Schools must become more proactive in providing parents with adequate notice of their rights to keep students' information private and handling the information as sensitive data. New York has the opportunity to become a national leader in helping schools to protect students from violations of their privacy by affording them added protections and the option not to disclose locator information. Recent proposed amendments to FERPA underscore this need, as students' personally identifiable information and data will be mined for the Statewide Longitudinal Data Systems, audit and evaluation of education programs, and research projects. Student data will be shared across government agency systems and with researchers, increasing the risk of data breaches and privacy violations. The proposed New York legislation would further restrict the release of personally identifiable information so that there will be fewer opportunities for data security to be compromised and do harm to an individual or group of students. Students need and deserve this extra protection. in the digital age, the line between a computer-based school directory and the online world is rapidly disappearing. Computer security breaches are rampant, exposing supposedly private and proprietary information to online databases. New York should not wait for a major breach of student information with serious consequences before acting. Currently, the online collection of personal information from children under age 13 is protected under the Federal Trade Commission's Children's Online Privacy Protection Act (COPPA). COPPA outlines requirements of a website operator's privacy policy, when and how to seek verifiable consent from parents, privacy protections for children, and restrictions on marketing to children. Students deserve no less than the same kind of robust privacy protections for their personal information maintained by their schools. This legislation would create additional and needed privacy protections for students while not imposing any mandates or requiring additional

spending by New York schools. The legislation will remind schools of their very serious obligation to protect student privacy, the risks of disclosing student information to commercial enterprises, and the challenges of collecting and disseminating personal data in the digital age. Schools are stewards of students' personally identifiable information and as such must adhere to the highest standards of practice in protecting privacy and confidentiality. This legislation will provide those standards and serve as a model for other states seeking to protect the privacy, safety, and security of its students.

PRIOR LEGISLATIVE HISTORY: S.7414-A/A.10795-A of 2009-2010

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: Shall take effect on July 1, 2011 and shall apply to school years beginning with the 2011-12 school year.

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A08474 Text:

S T A T E O F N E W Y O R K

8474

2011-2012 Regular Sessions

I N A S S E M B L Y

June 17, 2011

Introduced by M. of A. ROSENTHAL, NOLAN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the release of personally identifiable student information by school districts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The education law is amended by adding a new section 3212-b
- 2 to read as follows:
- 3 S 3212-B. RELEASE OF PERSONALLY IDENTIFIABLE INFORMATION BY SCHOOL
- 4 DISTRICTS. 1. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS
- 5 SHALL HAVE THE FOLLOWING MEANINGS:
- 6 (A) "STUDENT" SHALL MEAN AND INCLUDE ANY PERSON WITH RESPECT TO WHOM
- 7 AN EDUCATIONAL AGENCY OR INSTITUTION MAINTAINS EDUCATION RECORDS OR
- 8 PERSONALLY IDENTIFIABLE INFORMATION, BUT DOES NOT INCLUDE A PERSON WHO
- 9 HAS NOT BEEN IN ATTENDANCE AT SUCH AGENCY OR INSTITUTION.
- 10 (B) THE TERM "SCHOOL" MEANS ANY PUBLIC SCHOOL; IN ANY CITY, UNION
- 11 FREE, COMMON OR CENTRAL SCHOOL DISTRICT, ANY NON-PUBLIC SCHOOL OF
- 12 SECONDARY EDUCATION; AND ANY SCHOOL OF HIGHER EDUCATION.
- 13 (C) DISCLOSABLE DIRECTORY INFORMATION (DDI) HEREAFTER REFERRED TO IN
- 14 THIS SECTION AS "DIRECTORY INFORMATION", MEANS WITH RESPECT TO A
- 15 STUDENT, THE STUDENT'S NAME; PHOTOGRAPH; AGE; MAJOR FIELD OF STUDY;
- 16 GRADE LEVEL; ENROLLMENT STATUS (E.G., UNDERGRADUATE OR GRADUATE,
- 17 FULL-TIME OR PART-TIME); DATES OF ATTENDANCE; PARTICIPATION IN OFFICIAL-
- 18 LY RECOGNIZED ACTIVITIES AND SPORTS; WEIGHT AND HEIGHT OF MEMBERS OF
- 19 ATHLETIC TEAMS; DEGREES, HONORS AND AWARDS RECEIVED; AND THE MOST RECENT
- 20 EDUCATIONAL AGENCY OR INSTITUTION ATTENDED.
- 21 (D) "PERSONALLY IDENTIFIABLE STUDENT INFORMATION (PISI)" SHALL INCLUDE
- 22 DISCLOSABLE DIRECTORY INFORMATION, AND A STUDENT'S OR PARENT'S ADDRESS,
- 23 TELEPHONE NUMBER, AND E-MAIL ADDRESS.
- 24 2. (A) A SCHOOL MAY DISCLOSE DIRECTORY INFORMATION ABOUT A STUDENT
- 25 ONLY:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets

[] is old law to be omitted.

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(I) IF THE DISCLOSURE DOES NOT INCLUDE ANY INFORMATION OTHER THAN DISCLOSABLE DIRECTORY INFORMATION AS DEFINED IN THIS SECTION;

(II) AFTER GIVING THE PARENT OF THE STUDENT IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL NOTICE AND AN OPPORTUNITY TO OPT-OUT OF THE DISCLOSURE IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION; AND

(III) IF THE DISCLOSURE IS TO A SCHOOL NEWSPAPER, LOCAL NEWSPAPER, SCHOOL CLUB OR ORGANIZATION, SCHOOL YEARBOOK, HONOR ROLL OR OTHER RECOGNITION LIST, GRADUATION PROGRAM, SPORTS RELATED PUBLICATION WHICH PROVIDES SPECIFIC INFORMATION ABOUT PARTICULAR STUDENTS FOR THE PURPOSES OF A SPECIFIC SPORTS ACTIVITY OR FUNCTION, OR PARENT AND TEACHER ORGANIZATION.

(B) A SCHOOL MAY DISCLOSE PERSONALLY IDENTIFIABLE STUDENT INFORMATION ONLY WITH THE AFFIRMATIVE CONSENT OF THE PARENT OF THE STUDENT IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE IN ACCORDANCE WITH THE PROCEDURE PROVIDED IN SUBDIVISION THREE OF THIS SECTION IF:

(I) THE DISCLOSURE IS TO THE PARENT OF ANY STUDENT IN ATTENDANCE OR ANY ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL; OR

(II) THE DISCLOSURE IS TO A NON-PROFIT ORGANIZATION THAT: (A) SEEKS THE INFORMATION FOR A SPECIFIC PURPOSE DETERMINED BY THE SCHOOL TO BE BENEFICIAL TO THE STUDENT; (B) STATES IN WRITING THAT IT HAS NOT USED OR DISCLOSED PERSONALLY IDENTIFIABLE STUDENT INFORMATION FROM ANY SCHOOL IN A MANNER INCONSISTENT WITH THE TERMS OF DISCLOSURE WITHIN THE PAST FIVE YEARS; AND (C) AGREES IN WRITING TO USE THE INFORMATION ONLY FOR THAT PURPOSE AND TO RETURN OR DESTROY THE INFORMATION WHEN THE PURPOSE HAS BEEN FULFILLED OR WITHIN ONE YEAR AFTER RECEIPT, WHICHEVER COMES FIRST; AND

(III) THE SCHOOL HAS NO REASON TO BELIEVE THAT THE RECIPIENT HAS USED OR DISCLOSED PERSONALLY IDENTIFIABLE STUDENT INFORMATION FROM ANY SCHOOL IN A MANNER INCONSISTENT WITH THE TERMS OF THE DISCLOSURE WITHIN THE PAST FIVE YEARS.

(C) UNLESS OTHERWISE ALLOWED BY LAW, A SCHOOL MAY NOT, EVEN WITH THE AFFIRMATIVE CONSENT OF THE PARENT OF THE STUDENT IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE, DISCLOSE PERSONALLY IDENTIFIABLE STUDENT INFORMATION FOR A COMMERCIAL, FOR-PROFIT ACTIVITY INCLUDING BUT NOT LIMITED TO USE FOR:

(I) MARKETING PRODUCTS OR SERVICES;

(II) SELLING PERSONALLY IDENTIFIABLE STUDENT INFORMATION FOR USE IN MARKETING PRODUCTS OR SERVICES;

(III) CREATING OR CORRECTING AN INDIVIDUAL OR HOUSEHOLD PROFILE;

(IV) COMPILATION OF A STUDENT LIST;

(V) SALE OF THE INFORMATION FOR ANY COMMERCIAL PURPOSE; OR

(VI) ANY OTHER PURPOSE CONSIDERED BY THE SCHOOL AS LIKELY TO BE A COMMERCIAL, FOR-PROFIT ACTIVITY.

(D) IN MAKING AN ALLOWABLE DISCLOSURE UNDER THIS SUBDIVISION, A SCHOOL MAY ONLY DISCLOSE THE MINIMUM AMOUNT OF INFORMATION NECESSARY TO ACCOMPLISH THE PURPOSE OF THE DISCLOSURE.

3. WITHIN THE FIRST WEEK OF EACH SCHOOL YEAR, EACH SCHOOL DISTRICT SHALL ISSUE A PUBLIC NOTICE, INCLUDE IN THE STUDENT HANDBOOK, AND SEND HOME WITH EVERY STUDENT, INFORMATION STIPULATING THE DISCLOSURE PROCEDURES FOR DISCLOSABLE DIRECTORY INFORMATION AND PERSONALLY IDENTIFIABLE STUDENT INFORMATION.

(A) THE DISCLOSURE INFORMATION SHALL CONSIST OF THE DEFINITION OF DISCLOSABLE DIRECTORY INFORMATION AND PERSONALLY IDENTIFIABLE STUDENT INFORMATION AS SET FORTH IN THIS SECTION; AND SHALL ALSO INCLUDE:

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(I) THE PROCEDURE FOR PROHIBITING THE SCHOOL FROM DISSEMINATING DISCLOSABLE DIRECTORY INFORMATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION AND A DESCRIPTION OF ANY DIRECTORY INFORMATION THAT THE SCHOOL PROPOSES TO DISCLOSE DURING THE SCHOOL YEAR; AND

(II) THE PROCEDURE FOR AUTHORIZING THE SCHOOL TO DISCLOSE PERSONALLY IDENTIFIABLE STUDENT INFORMATION UNDER PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION AND A DESCRIPTION OF ANY PERSONALLY IDENTIFIABLE STUDENT INFORMATION THAT THE SCHOOL PROPOSES TO DISCLOSE DURING THE SCHOOL YEAR.

9 (B) (I) IF THE SCHOOL DOES NOT RECEIVE NOTICE FROM THE PARENT OF A
10 STUDENT IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE AT THE
11 SCHOOL PROHIBITING THE DISCLOSURE OF DIRECTORY INFORMATION WITHIN THIRTY
12 DAYS OF THE DISSEMINATION OF THE INFORMATION REQUIRED TO BE PROVIDED IN
13 PARAGRAPH (A) OF THIS SUBDIVISION, THE SCHOOL MAY DISSEMINATE DISCLOSA-
14 BLE DIRECTORY INFORMATION RELATING TO THE STUDENT PURSUANT TO PARAGRAPH
15 (A) OF SUBDIVISION TWO OF THIS SECTION.

16 (II) IF THE SCHOOL DOES RECEIVE CONSENT FROM THE PARENT OF A STUDENT
17 IN ATTENDANCE OR THE ELIGIBLE STUDENT IN ATTENDANCE AT THE SCHOOL TO
18 DISCLOSE PERSONALLY IDENTIFIABLE STUDENT INFORMATION UNDER PARAGRAPH (B)
19 OF SUBDIVISION TWO OF THIS SECTION, THE SCHOOL MAY DISSEMINATE
20 PERSONALLY IDENTIFIABLE STUDENT INFORMATION AS SET FORTH IN THIS
21 SECTION.

22 4. NOTHING IN THIS SECTION SHALL LIMIT THE ADMINISTRATIVE USE OF
23 PUBLIC SCHOOL RECORDS BY A PERSON ACTING EXCLUSIVELY IN THE PERSON'S
24 CAPACITY AS AN EMPLOYEE OF A BOARD OF EDUCATION OR OF THE STATE OR ANY
25 OF ITS POLITICAL SUBDIVISIONS, ANY COURT, OR THE FEDERAL GOVERNMENT.

26 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE RELEASE OF
27 PERSONALLY IDENTIFIABLE STUDENT INFORMATION TO THE DEPARTMENT, THE
28 UNITED STATES MILITARY, OR ANY INSTITUTION OF HIGHER EDUCATION, ANY
29 POLITICAL SUBDIVISION OR FEDERAL AGENCY THAT DEMONSTRATES AN APPROPRIATE
30 NEED FOR THE INFORMATION OR A SCHOOL DISTRICT OR SCHOOL THAT DEMON-
31 STRATES AN APPROPRIATE NEED FOR THE INFORMATION.

32 S 2. This act shall take effect July 1, 2011 and shall apply to school
33 years beginning with the 2011-2012 academic year.

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