

SENATE BILL 2029

By Green

AN ACT to amend Tennessee Code Annotated, Title 49,  
relative to privacy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-6-7003(b), is amended by deleting the subsection and substituting instead:

(b) The policy shall provide that a parent or legal guardian is entitled to:

(1) Review all teaching materials, instructional materials, and other teaching aids used in the classroom of the parent or legal guardian's child including:

(A) Teachers' manuals;

(B) Curricular materials;

(C) Films or other video materials;

(D) Tapes;

(E) Computer programs; and

(F) Other materials, including online materials, and all materials used in connection with a personal analysis, an evaluation, or a survey described in § 49-2-211(b); and

(2) Review tests that are developed by and graded by a teacher of the parent or legal guardian's child. Parents are entitled to review state assessments as provided in chapter 6, part 60 of this title.

SECTION 2. Tennessee Code Annotated, Section 49-2-211(b), is amended by deleting the subsection and substituting instead:

(b)

(1) The policy shall not require a student, without the prior informed written consent of the student's parent or legal guardian, to participate in a personal analysis, an evaluation, or a survey that is not directly related to academic instruction and that reveals or attempts to affect the student's attitudes, habits, traits, opinions, beliefs, or feelings concerning:

(A) Political affiliations;

(B) Religious beliefs or practices;

(C) Mental or psychological conditions that may embarrass the student or the student's family;

(D) Sexual behavior, or attitudes, or orientation;

(E) Illegal, antisocial, self-incriminating, or demeaning behavior;

(F) Critical appraisals of other individuals with whom the student has a close family relationship;

(G) Legally recognized privileged or confidential relationships, including a relationship with a lawyer, minister, or physician; or

(H) Income, except as required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(2) The policy set forth in subsection (a) shall allow a parent or legal guardian access to review all surveys, analyses, or evaluations prior to administration of the survey, analysis, or evaluation to allow the parent or legal guardian to determine whether to give consent. A parental consent form for a personal analysis, an evaluation, or a survey described in this section shall accurately reflect the contents and nature of the personal analysis, evaluation, or survey.

(3) The policy shall require a parent, legal guardian, or student, if the student is eighteen (18) years of age or older, to provide informed written consent before the collection of individual student biometric data.

SECTION 3. Tennessee Code Annotated, Section 49-2-211, is amended by adding the following language as new subsections:

(d) If a student is eighteen (18) years of age or older, then the right to consent or withhold consent given to parents or legal guardians by this section is that of the student.

(e) The department of education and the local board of education shall give parents, or legal guardians, and students notice of their rights under this section.

(f) As used in this section, "informed written consent" has the same meaning as defined in § 49-1-702.

SECTION 4. Tennessee Code Annotated, Section 49-1-702(1), is amended by deleting the subdivision and substituting instead:

(1) "Aggregate data" means data collected or reported at the group, cohort, or institutional level. "Aggregate data" includes data that is:

(A) Not limited to one (1) student;

(B) Not able to be used to identify an individual student; and

(C) Able to be tracked across time, organizations, and student

populations;

SECTION 5. Tennessee Code Annotated, Section 49-1-702(2), is amended by deleting the subdivision and substituting instead:

(2) "Biometric record" means a record of one (1) or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual.

"Biometric record" includes fingerprints, retina and iris patterns, voice prints, DNA sequence, facial characteristics, and handwriting;

SECTION 6. Tennessee Code Annotated, Section 49-1-702(5), is amended by deleting the subdivision and substituting instead:

(5) "De-identified data" means a student dataset in which parent and student identifying information, including the personal identification number, has been removed. "De-identified data" is data that prevents an individual's identity from being connected with information;

SECTION 7. Tennessee Code Annotated, Section 49-1-702, is amended by adding the following language as new, appropriately designated subdivisions:

( ) "Informed written consent" means written consent which requires, at a minimum, that:

(A) Parents be advised that consenting to the release of data that consists of personally identifiable information or mental health or behavior records to an LEA or school will not be limited in its distribution of the data and that the data may be disclosed to state agencies, federal agencies, and third party contractors; and

(B) An LEA or school disclose to parents:

(i) The name of the persons or entities that will receive the data;

(ii) The purpose for which the data is to be used by the receiving persons or entities;

(iii) The data that will be shared;

(iv) How the data will be shared;

(v) The process that will be used to destroy the shared data when it is no longer needed to fulfill its purpose; and

(vi) The process that the LEA or school will implement to insure compliance with the destruction process;

( ) "Mental health assessment" means:

(A) A behavioral evaluation;

(B) A personality examination or analysis; or

(C) Any assessment regarding interest inventories that collects or elicits information about attitudes, habits, traits, opinions, beliefs, feelings, or dispositions, including:

(i) Multi-tiered systems of supports;

(ii) Positive behavior intervention and supports;

(iii) Response to intervention; or

(iv) Universal design for learning designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group;

( ) "Mental health service" means any social, emotional, or behavioral interventions, including:

(A) Multi-tiered systems of support;

(B) Positive behavior interventions and support;

(C) Response to intervention; or

(D) Universal design for learning designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group;

( ) "Parent" means the parent, guardian, person who has custody of the child or individual who has caregiving authority for the purposes of § 49-6-3001;

( ) "Personally identifiable information" means:

(A) The name of a student;

(B) The name of a student's parent or any other family member;

(C) The address of a student or any family member of the student;

(D) A personal identifier, including a student's social security number, student number assigned under § 49-6-5101, or biometric record;

(E) Other indirect identifiers, including a student's date of birth, place of birth, and mother's maiden name;

(F) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or

(G) Information requested by a person who the school reasonably believes knows the identity of the student to whom the education record relates;

( ) "Psychiatric or psychological examination or test" means a method of obtaining information, including a group activity, that:

(A) Is not directly related to academic instruction; and

(B) Is designed to elicit information about attitudes, habits, traits, opinions, beliefs, or feelings;

( ) "Psychiatric or psychological treatment" means an activity involving the planned, systematic use of methods or techniques that:

(A) Are not directly related to academic instruction; and

(B) Are designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group;

( ) "School" means a public school or a public charter school;

( ) "Student education record" means a record maintained by an LEA or school that contains information directly related to a student that includes personally identifiable information or includes medical or mental health information regarding the student;

SECTION 8. Tennessee Code Annotated, Title 49, Chapter 1, Part 7, is amended by adding the following language as a new section:

(a) An LEA or school shall obtain prior informed written consent from the parent before the parent's student may participate in any medical or mental health assessment or mental health service that is conducted in connection with the LEA or school. To give informed written consent, a parent must sign an informed explanatory release form explicitly allowing the parent's student to participate in the medical or mental health assessment or mental health service.

(b) Before obtaining a parent's informed written consent as described in subsection (a), an LEA or school shall provide the parent informed written notice describing in detail the medical or mental health assessment or mental health service.

The written notice shall include:

- (1) The purpose for the assessment or service;
- (2) The provider or contractor providing the mental health assessment or mental health service;
- (3) The date and time at which the assessment or service will begin; and
- (4) The length of time the assessment or mental service may last.

SECTION 9. Tennessee Code Annotated, Title 49, Chapter 1, Part 7, is amended by adding the following language as a new section:

(a) An LEA or school shall not require a student to submit, without prior informed written consent from the student's parent, to a psychiatric or psychological examination or test or psychiatric or psychological treatment, if the purpose of the examination, test, or treatment is to reveal information concerning:

- (1) Mental or psychological conditions that may embarrass the student or the student's family;
- (2) Sexual behavior, or attitudes, or orientation;
- (3) Illegal, antisocial, self-incriminating, or demeaning behavior;

(4) Critical appraisals of other individuals with whom the student has a close family relationship;

(5) Legally recognized privileged or confidential relationships, including a relationship with a lawyer, minister, or physician; or

(6) Income, except as required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b) Pursuant to § 49-1-705, LEAs and schools shall not collect individual student data on political affiliations or religion.

SECTION 10. Tennessee Code Annotated, Section 49-1-705, is amended by designating the existing language as subsection (a) and adding the following language as new subsections:

(b) LEAs and schools shall take all measures to protect personally identifiable information.

(c) Except as otherwise required by state or federal law, an LEA or school shall:

(1) De-identify all personally identifiable information for each student when used for any purpose outside of the LEA or school; and

(2) Maintain personally identifiable information for each student separately from the state longitudinal data system.

(d) For the purposes of subsection (c), an LEA or school shall create a unique identification for each student of the LEA or school.

(e) An LEA or school shall not provide the information described in subdivisions (a)(1)-(6) of Section 9 regarding a student to the department or to a contractor of the department.

SECTION 11. Tennessee Code Annotated, Section 49-1-704, is amended by adding the following language as new subsections:



( ) A parent of a student may deny any person who is not an employee of the LEA or school access to the student's personally identifiable information, unless required by federal law.

( ) Notwithstanding any other state law, and except as otherwise provided under federal law, an LEA or school may only provide de-identified aggregate data when complying with any state or federal reporting requirement. An LEA or school shall not provide a student's personally identifiable information.

( ) Notwithstanding § 49-1-703(2)(A)(v), and except as otherwise provided under federal law, any disclosure to an organization conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction, must be done through the LEAs or schools and through the release of de-identified aggregate data.

SECTION 12. Tennessee Code Annotated, Title 49, Chapter 1, Part 7, is amended by adding the following language as a new section:

An LEA or school shall not release personally identifiable information from a student education record without the informed written consent of the student's parent.

SECTION 13. Tennessee Code Annotated, Title 49, Chapter 1, Part 7, is amended by adding the following language as a new section:

(a) An LEA or school shall not request or maintain a student's social security number.

(b) Any student identification number or other unique personal identifier that is displayed on a student's identification badge or card shall not allow access to the student's education records except when used in conjunction with one (1) or more factors that authenticate the user's identity, such as a PIN number, password, or other

factor known or possessed only by persons authorized to access student education records.

SECTION 14. Tennessee Code Annotated, Title 49, Chapter 1, Part 7, is amended by adding the following language as a new section:

(a) Before an LEA or school may transfer student education records or any other personally identifiable information of a student, the LEA or school shall notify the student's parent regarding the reason for the disclosure and the purpose for which the information will be used.

(b) Except as provided in § 49-1-703(2)(C)(ii), an LEA or school shall not transfer student information described in subsection (a) without the informed written consent of the student's parent.

SECTION 15. Tennessee Code Annotated, Title 49, Chapter 1, Part 7, is amended by adding the following language as a new section:

(a) An LEA or school shall provide a student's parent the option of opting out of including any of the student's personally identifiable information in directory information.

(b) An LEA or school shall provide notice to a student's parent that includes, as applicable, the following information:

(1) That the directory information is given to outside vendors and testing contractors; and

(2) That outside vendors and contractors align unique personal identifiers to directory information.

SECTION 16. Tennessee Code Annotated, Title 49, Chapter 1, Part 7, is amended by adding the following language as a new section:

Whenever any right is given to a parent under this part, including the right of informed written consent before an action can be taken and the right to access student

records, if the student is eighteen (18) years of age or older and the student is competent to exercise the right, then the right belongs to the student.

SECTION 17. This act shall take effect July 1, 2018, the public welfare requiring it.