



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

AMENDED
FACT SHEET FOR H.B. 2088

schools; assessments; surveys; informed consent

Purpose

Requires written informed consent from a parent of a pupil prior to the administration of surveys regarding any of 14 specified items.

Background

The Family Educational Rights and Privacy Act (FERPA) is a federal law enacted in 1974 that addresses the privacy of student education records. Under the law, parents have certain rights to their children's education records and these rights transfer to the student when he or she reaches 18 years of age or attends a school beyond the high school level. Students to whom the rights have transferred are known as *eligible students*.

Parents or an eligible student have the right to review the student's education records kept by a school and request that a school correct records that the parent or eligible student believes are inaccurate or misleading. Generally, schools must keep student information private unless they have written permission from the parent or eligible student to release any information from a student's education record.

Schools may disclose student education records, without consent, to the following parties or under the following conditions: 1) school officials with legitimate educational interest; 2) other schools to which a student is transferring; 3) specified officials for audit or evaluation purposes; 4) appropriate parties in connection with financial aid to a student; 5) organizations conducting certain studies for or on behalf of the school; 6) accrediting organizations; 7) to comply with a judicial order or lawfully issued subpoena; 8) appropriate officials in cases of health and safety emergencies; and 9) state and local authorities, within a juvenile justice system, pursuant to specific State law (34 Code of Federal Regulations § 99.31). Education records are records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution (U.S. Department of Education).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Surveys

1. Requires each school district and charter school to obtain written informed consent from the parent of a pupil before administering any survey (Survey) that is retained by a school

district, charter school or the Department of Education and that solicits personal information about the pupil concerning any of the following:

- a) critical appraisals of another person with whom a pupil has a close relationship;
 - b) gun or ammunition ownership;
 - c) illegal, antisocial or self-incriminating behavior;
 - d) income or other financial information;
 - e) legally recognized privileged or analogous relationships, such as relationships with a lawyer, physician or member of the clergy;
 - f) medical history or medical information;
 - g) mental health history or mental health information;
 - h) political affiliations, opinions or beliefs;
 - i) pupil biometric information;
 - j) the quality of home interpersonal relationships;
 - k) religious practices, affiliations or beliefs;
 - l) self-sufficiency as it pertains to emergency, disaster and essential services interruption planning;
 - m) sexual behavior or attitudes; or
 - n) voting history.
2. Requires, at the beginning of every school year, every school district and charter school to obtain written informed consent from the parent of a pupil to participate in any Survey for the entire year.
 3. Allows a parent to revoke consent at any time for the pupil to participate in any Survey.
 4. Requires consent only from the pupil if the pupil is at least 18 years of age.
 5. Requires school districts or charter schools to approve and authorize Surveys.
 6. Prohibits school employees from administering a Survey without written authorization from the school district or charter school.
 7. Applies this act to Surveys:
 - a) regardless of the stated purpose of the Survey;
 - b) regardless of the quantity or percentage of questions that solicit data; and
 - c) including written or digital Surveys.
 8. Exempts the following from this act:
 - a) mental health screenings or the identification of, or programming for, children with disabilities or gifted pupils;
 - b) class instruction, discussion or assignment on subjects within the purview of the course;
 - c) private schools;
 - d) any nationally recognized college entrance exam that a student chooses to take regardless if the administration of the exam takes place on public school property;
 - e) any Survey that does not require a student's name or any other personally identifiable information;
 - f) any survey conducted or implemented by the Arizona Criminal Justice Commission; and

- g) any method of surveying a student that is conducted because a person has a reasonable belief that a minor is or has been a victim of abuse.
9. Prohibits the imposition of a penalty on a pupil or parent who does not participate in a Survey and states participation in those Surveys is not required:
- a) to demonstrate that a pupil has met competency requirements for any grade level, course or subject;
 - b) for a pupil to qualify for placement into any grade level, course or subject;
 - c) for a pupil to be promoted to the next grade;
 - d) for a pupil to receive credit for any course or as part of a letter grade for any course;
 - e) for a pupil to graduate from high school; or
 - f) for a pupil to obtain a high school equivalency diploma.
10. Requires a school district or charter school to provide an alternative educational activity for any pupil whose parent does not consent to participate in a Survey.
11. Counts students who are provided an alternative educational activity towards daily attendance and average daily membership and prohibits these students from being counted as absent.
12. Prohibits responses to a Survey to be included:
- a) as part of a school achievement profile and corresponding letter grade classification or similar school rating system;
 - b) in the Education Learning and Accountability data System or similar system;
 - c) in the Student Accountability Information System or similar system; or
 - d) in any school, administrator or teacher rating system.
13. Prohibits the imposition of a penalty or grant of a reward to a school employee, school district, school or charter school based on the pupil participation rate in a Survey.

Survey Information

14. Directs a charter school or school district, upon request, to provide any available information in a timely manner to the parent of a pupil regarding a Survey and requires the information to include the following:
- a) the name of the Survey;
 - b) the date or dates on which the Survey will be administered;
 - c) the method or methods of administering the Survey;
 - d) the amount of time required to administer the Survey;
 - e) the type of information collected by the Survey; and
 - f) the reasons for administering the Survey.

Violations

15. Allows a parent that has a reasonable belief a school district or charter school has violated this act to file a complaint with the Attorney General (AG) or the county attorney for the county in which an alleged violation occurred.

16. Allows the AG or county attorney to initiate a suit in the superior court in the county in which the school district or charter school is located.
17. Allows the court to impose a civil penalty up to \$500 for each violation and holds the school district or charter school out of compliance with this act responsible for the payment of all penalties.
18. Pays all penalties collected by the court to the Attorney General or county treasurer for the reimbursement of prosecution costs.
19. Permits an attorney acting on behalf of a public school to request a legal opinion of the county attorney or AG as to whether the public school would violate this act.
20. Affords any school district or charter school that fails to comply with this act the opportunity to cure the failure within a reasonable period of time and without penalty after receiving written notice.
21. Defines *cure* as the destruction of any information gathered in violation and the provision of written instruction to the individual circulating the survey that is required to be kept on file for one year after receipt of the written notice of the alleged failure to comply.

Arizona Education Learning and Accountability System (AELAS) and Assessments

22. Prohibits nontest data from inclusion in longitudinal, student level data unless approved in a public meeting of the State Board of Education (SBE) and linked to SBE's homepage.
23. Requires SBE to ensure statewide achievement assessments only collect types of pupil nontest data that are approved by SBE at a public meeting and published on SBE's homepage.
24. Directs SBE to post in a prominent position on its homepage a link to nontest indicators entitled *What nontest data does the State of Arizona collect about Arizona pupils?*
25. Includes on the website the types of data collected, the reasons for the collection and the entities with which the data is shared.

Miscellaneous

26. Defines terms.
27. Makes technical and conforming changes.
28. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Modifies the definition of *nontest*.

2. Eliminates demeaning behavior from the Survey list and specifies self-sufficiency pertains to emergency, disaster and essential services interruption planning.
3. Replaces references to guilt and conviction with liability and judgement respectively.
4. Specifies how a school district, charter school or school may cure a violation.

Amendments Adopted by Committee of the Whole

1. The COW amendment substituted the Education Committee amendment.
2. Requires written informed consent at the beginning of every school year for any Survey administered in that school year and allows parents to revoke consent at any time.
3. Provides exemptions for college entrance exams, anonymous surveys, surveys conducted by the Arizona Criminal Justice Commission and mandatory reporting concerning child abuse.
4. Eliminates notice requirements and instead requires charter schools and school districts to provide information in a timely manner upon request.
5. Replaces the ability for individuals to bring a civil action with a process that allows a complaint to be filed with the Attorney General or county attorney who may then initiate a suit.
6. Specifies how a school district, charter school or school may cure a violation.
7. Removes requirements concerning third-party contractors.
8. Specifies the act only applies to written and digital surveys.
9. Strikes notwithstanding clauses.
10. Eliminates demeaning behavior from the Survey list and specifies self-sufficiency pertains to emergency, disaster and essential services interruption planning.
11. Removes definitions of *aggregated*, *competency requirements* and *permanent educational record* and modifies the definition of *nontest*.

House Action

ED 2/17/16 DPA 5-1-1
3rd Read 3/1/16 34-24-2

Senate Action

ED 3/10/16 DPA 5-2-0