

ALASKA STATE LEGISLATURE
HOUSE EDUCATION STANDING COMMITTEE

April 11, 2014

8:05 a.m.

MEMBERS PRESENT

Representative Lynn Gattis, Chair
Representative Lora Reinbold, Vice Chair
Representative Gabrielle LeDoux
Representative Dan Saddler
Representative Paul Seaton
Representative Harriet Drummond

MEMBERS ABSENT

Representative Peggy Wilson
Representative Sam Kito III

COMMITTEE CALENDAR

HOUSE BILL NO. 257

"An Act relating to restrictions on the collection, storage, and handling of student data."

- HEARD & HELD

HOUSE BILL NO. 365

"An Act relating to the Alaska performance scholarship."

- MOVED HB 365 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 257

SHORT TITLE: ACCESS TO STUDENT DATA

SPONSOR(S): REPRESENTATIVE(S) REINBOLD

01/21/14	(H)	PREFILE RELEASED 1/17/14
01/21/14	(H)	READ THE FIRST TIME - REFERRALS
01/21/14	(H)	EDC, JUD, FIN
01/22/14	(H)	JUD REFERRAL REMOVED
04/11/14	(H)	EDC AT 8:00 AM CAPITOL 106

BILL: HB 365

SHORT TITLE: PERFORMANCE SCHOLARSHIP: QUALIFYING EXAM

SPONSOR(S): REPRESENTATIVE(S) SEATON

02/26/14 (H) READ THE FIRST TIME - REFERRALS
02/26/14 (H) EDC
03/21/14 (H) EDC AT 8:00 AM CAPITOL 106
03/21/14 (H) Heard & Held
03/21/14 (H) MINUTE(EDC)
04/11/14 (H) EDC AT 8:00 AM CAPITOL 106

WITNESS REGISTER

ELIJAH VERHAGAN, Staff
Representative Lora Reinbold
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 257, on behalf of the prime sponsor, Representative Reinbold.

JOSEPH CHATFIELD
Healy, Alaska

POSITION STATEMENT: Testified during the discussion of HB 257.

LES MORSE, Deputy Commissioner
Office of the Commissioner
Department of Education and Early Development (EED)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HB 257.

REPRESENTATIVE PAUL SEATON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 365 as the prime sponsor.

ACTION NARRATIVE

[8:05:20 AM](#)

CHAIR LYNN GATTIS called the House Education Standing Committee meeting to order at 8:05 a.m. Representatives Reinbold, Seaton, and LeDoux, and Gattis were present at the call to order. Representatives Drummond and Saddler arrived as the meeting was in progress.

HB 257-ACCESS TO STUDENT DATA

[8:05:33 AM](#)

CHAIR GATTIS announced that the first order of business would be HOUSE BILL NO. 257, "An Act relating to restrictions on the collection, storage, and handling of student data."

8:06:13 AM

REPRESENTATIVE REINBOLD moved to adopt the proposed committee substitute (CS) for HB 257, labeled 28-LS1096\Y, Mischel, 4/10/14 as the working document. There being no objection, Version Y was before the committee.

8:06:28 AM

ELIJAH VERHAGEN, Staff, Representative Lora Reinbold, Alaska State Legislature, presented HB 257, on behalf of the sponsor, Representative Lora Reinbold, paraphrasing from the sponsor statement, said:

As the educational system merges into the Digital Age it is important that we protect the privacy, security, and confidentiality of student data. Throughout Alaska, and our country as a whole, there has been growing public concern about the collection of personal data. [HB] 257 addresses these concerns and strengthens student digital privacy laws.

Referenced by the U.S. Secretary of Education, Secretary Duncan, in the supporting documents in your packet entitled, "Technology in Education, Privacy and Progress," Secretary Duncan states, on page 3, three paragraphs from the bottom, that there are three keystone federal laws protecting student privacy: The Family Educational Rights and Privacy Act, The Protection of Pupil Rights Amendment, and the Children's Online Privacy Protection Act.

Directing attention to page 4, second paragraph down, he continues and says, "But federal law provides only some of the guard rails for data and privacy practice. Much of the control over these issues lies in the policies of states and districts."

And so, the U.S. Secretary of Education is kind of asking for the states' participation in helping ensure that all children and their families' privacy rights are secured.

There are four states so far that have either introduced and passed similar private data privacy legislation or are working on it right now. The states of New York and Oklahoma have already passed similar legislation and the states of Idaho and Louisiana are currently working on legislation. Both of the states have a bill that has passed one of the bodies and is currently in the process and moving forward.

So for Alaska's case, this bill is more of a preventative measure. To get ahead of the game and protect our students and their families' privacy before it really becomes a major issue in Alaska, but with the current direction that we're going and using all the wonderful capabilities that we have nowadays with technology it is important at the same time to be cautious of students and their private information that can be easily accessed by computer hacking on the web.

[8:11:25 AM](#)

MR. VERHAGEN continued by providing a sectional analysis of HB 257, Version Y. Section 1 would amend the access to school records to include student data based on the preference of the parent, foster parent, or guardian. Currently, a parent can receive a physical copy of student's record and this language would allow them to obtain it in a digital form.

[8:12:04 AM](#)

CHAIR GATTIS asked whether a parent can currently obtain this information.

MR. VERHAGEN answered yes; that parents can ask and obtain a physical copy of the student's record. This bill would amend it to allow parents the preference to receive a digital copy.

[8:12:24 AM](#)

REPRESENTATIVE SEATON directed attention to line 12 to paragraph (2), which read, "record information that consists of the child's address" He asked if this is the only personal identifier that should be excluded or if phone numbers or other information should be excluded.

MR. VERHAGEN answered that the language is in current statute. Further on in the bill, the language will limit access to school districts and to restrict outside entities from gathering information, he said.

[8:13:35 AM](#)

REPRESENTATIVE REINBOLD acknowledged Representative Seaton's point and she agreed it needs to be addressed.

[8:13:45 AM](#)

REPRESENTATIVE SEATON pointed out that the potential for broad distribution with electronic means exists and the sponsor may wish to also consider adding phone numbers to the list of restricted information.

MR. VERHAGEN offered to look into this further.

[8:14:22 AM](#)

MR. VERHAGEN continued with Section 2, Version Y, which adds a new subsection that bans the use of student data for commercial purposes without the consent of a parent or legal guardian.

[8:14:41 AM](#)

REPRESENTATIVE LEDOUX asked whether that information is currently banned.

MR. VERHAGEN responded that it is not currently banned and this language would establish a preventative measure for a situation that is becoming prevalent in the Lower 48. He said the Department of Education and Early Development (EED) does not currently give out information for commercial use.

[8:15:19 AM](#)

REPRESENTATIVE SADDLER referred to page 2, line 3, of HB 257, Version Y, which refers to "student's parent or legal guardian", but similar language on page 4, line 2 of Version Y, adds, "foster parent" to the list. He asked for further clarification on why was it necessary to include foster parents on page 4 but not mention them on page 2.

MR. VERHAGEN responded that it may be an oversight.

REPRESENTATIVE LEDOUX added that Section 1 also contains a foster parent reference.

[8:16:18 AM](#)

REPRESENTATIVE SEATON noted that currently the information is not given out for commercial purposes, but the language [on page 2, lines 1-10] provides an avenue to do so. He questioned what benefit this is to students and if the legislature needs to make this exception. He offered to discuss this issue further with the sponsor.

[8:17:35 AM](#)

REPRESENTATIVE REINBOLD explained that the intent is to prevent students from being targeted for marketing purposes. She was uncertain of what approach to take and whether it should be by parental consent or simply not allowed.

REPRESENTATIVE SADDLER offered his preference that public information gathered in this way should not be available for any commercial use, and the bill should use an opt-in approach rather than an opt-out approach.

REPRESENTATIVE REINBOLD agreed.

REPRESENTATIVE LEDOUX said schools should be concerned with teaching rather than these types of issues related to marketing. She offered her preference for a blanket blackout without options.

REPRESENTATIVE REINBOLD responded that she tended to agree.

[8:19:40 AM](#)

MR. VERHAGEN directed attention to Section 3 of Version Y, which adds a new section for school district data security that requires each school district in the state to adopt, implement, and monitor a plan and policies for student data security and to annually publish the plan, a data inventory, and an explanation of the inventory to increase transparency for parents and guardians. The data security would include a description of each data field, the reason for collection and additional information published annually on the school's website. Thus, districts could develop their own security data plan to increase security of student information. Adoption, implementation and compliance would meet EED's requirements for security measures,

as well. Parents would have access to the school website to see what student information is available. He concluded that the intent is to provide transparency while securing private information.

[8:23:18 AM](#)

CHAIR GATTIS asked why schools collect the data and the reason for schools to have this information. She related a scenario to illustrate how the information might be accessed and used by parents, teachers, and the school. She asked whether any data will be collected on students such as their reading ability.

MR. VERHAGEN clarified that HB 257 is intended to restrict the ability for the information to be "hacked into" since the department would already have access to the data.

[8:26:25 AM](#)

REPRESENTATIVE DRUMMOND referred to proposed Sec. 3, subparagraphs (A)-(F) of Version Y, and asked whether this is the type of information published by other states that use data security systems.

MR. VERHAGEN answered he believes that is correct; that HB 257 is similar to legislation passed by other states since it is based on model legislation.

[8:27:00 AM](#)

REPRESENTATIVE DRUMMOND referred to subparagraph (D) of Version Y, and asked why the public should know where the server is located. She wondered if that knowledge could lead to a data security breach.

MR. VERHAGEN offered to look into this aspect. He suggested the location may be general, such as advising the public that the server containing the student information is retained on site rather than contracted out.

REPRESENTATIVE DRUMMOND pointed out all of the information resides on the server so these are high security areas. She offered her belief that knowing that the information is held in-state versus in another state or country may be more acceptable approach to take.

MR. VERHAGEN responded with agreement.

8:29:08 AM

REPRESENTATIVE SEATON directed attention to subparagraph (E) of Version Y, which read, "a list of nongovernmental entities that have access to one or more student data fields linked to personally identifiable information." He asked the reason nongovernmental agencies should have access to student data.

MR. VERHAGEN related that the examples include testing services or on-line educational support services that are nongovernmental organizations (NGOs).

REPRESENTATIVE SEATON offered to hold the question for the department.

8:32:16 AM

REPRESENTATIVE REINBOLD, in response to Representative Seaton, clarified that subparagraph (E), Version Y, isn't designed for permissiveness, but is to establish parameters.

8:33:03 AM

MR. VERHAGEN related that proposed Sec. 4 of Version Y, provides a definition of "student data" which read as follows:

Sec. 14.03.200. Definition. In AS 14.03.015 - 14.03.200, "student data" means

(1) electronic information pertaining to an individual student or group of students collected or reported by a school while the student or group of students was enrolled in a school in the state or that was accessed or produced by a student or group of students while enrolled in a school in the state;

(2) electronic information pertaining to a student or group of students that has been or is intended to be transmitted to or stored by a third-party contractor that provides cloud computing services or other similar services to the school; and

(3) electronic mail communication and access information, document production, and similar

electronic information accessed or produced by a student on a school server

MR. VERHAGEN acknowledged that information can be useful to teachers; however, it will prohibit future collection of irrelevant information that isn't vital for helping the student with their success.

[8:34:26 AM](#)

REPRESENTATIVE SADDLER said definitions are important controls. He directed attention to page 3, line 1, of Version Y, which limits data generated when a student was enrolled in a school. He noted that language isn't carried forward in paragraphs (2) and (3). He encouraged redrafting to carry forward that language.

MR. VERHAGEN agreed.

[8:35:05 AM](#)

REPRESENTATIVE SADDLER referred to page 3, line 8, to paragraph (3). He asked for further clarification on whether his understanding is correct, that paragraph (1) relates to website visits and paragraph (3) relates to electronic mail accessed or sent by a student.

MR. VERHAGEN agreed the definition is important. He offered to work with the drafters to ensure these points are covered.

[8:35:52 AM](#)

REPRESENTATIVE SEATON suggested that student data may need to be separated into two groups, one for private personal information and another for other student related information or activities. He related a scenario to illustrate how a student preparing a video might inadvertently release private information if it is attached. He offered to work with the sponsor on the language.

MR. VERHAGEN agreed to continue to work on the language. He directed attention to page 3 of the U.S. Secretary Duncan's statement on technology to the phrase which read, "No one make you sign up for Facebook, but you have to go to school. Our expectations for the protection of children must be paramount." He said the school should keep relevant information to help the student but not keep irrelevant information if the student happens to give more details.

[8:38:53 AM](#)

REPRESENTATIVE DRUMMOND suggested that parental oversight may be lacking. She asked for further clarification on the source of the model legislation.

MR. VERHAGEN answered that HB 257 is modeled after New York legislation. He offered to provide a copy to the committee.

REPRESENTATIVE LEDOUX related his understanding, based on [a drafting memo from Legal Services] that the bill was based on model legislation prepared by the ALEC [the American Legislative Exchange Council].

REPRESENTATIVE REINBOLD agreed; she elaborated that Microsoft actually helped design some of language due to the prevalence of data security issues.

[8:40:01 AM](#)

MR. VERHAGEN turned to Section 5 of Version Y, which adds several duties to the State Board of Education and Early Development that relate to adoption of a data inventory and policies and procedures regarding access to student data. He referred to page 3, lines 26-28, to proposed paragraph (6), which read:

- (6) policies and procedures consistent with relevant state and federal privacy laws that**
 - (A) limit access to individual and redacted student data to**
 - (i) persons who require access to perform duties assigned by the department, a school district, the administrator of a public school;**
 - (ii) the student who is the subject of the data and the student's parent, foster parent, or guardian;**
 - (iii) authorized agencies as provided in state or federal law or by an interagency agreement;**

MR. VERHAGEN explained that this bill will work with the three aforementioned federal acts to tighten student data.

[8:41:49 AM](#)

REPRESENTATIVE REINBOLD offered her belief that the department doesn't need access to certain information so this bill limits access to information that could be construed as invading privacy.

MR. VERHAGEN referred to sub-subparagraphs (i)-(iii), which would allow parents to access student data.

[8:42:53 AM](#)

REPRESENTATIVE SEATON asked whether the reference to AS 14.03.075 [on page 3, line 21] refers to the secondary school competency testing, the HSGQE [High School Graduation Qualifying Examination] which has been repealed. He suggested that this may need some revision.

REPRESENTATIVE REINBOLD welcomed Representative Seaton's assistance in refining the bill.

[8:43:48 AM](#)

MR. VERHAGEN, continuing with the sectional analysis of proposed Sec. 5 of Version Y, noting this language allows access by authorized agencies in state and federal law or by interagency agreement. Subparagraph (B) would restrict student data transfer except as necessary to comply with state and federal law as per the aforementioned federal Acts. It also would not limit schools from transferring data to other schools when students transfer. In addition it would allow the state to compare multistate data to better evaluate the state's progress; however, but would not use personal information.

MR. VERHAGEN related that subparagraph (C) of Version Y prohibits collecting and reporting student data pertaining to juvenile delinquency records, criminal records, or health records.

[8:45:38 AM](#)

REPRESENTATIVE LEDOUX suggested that criminal records might be quite relevant to what should be collected, noting that criminal records are not private records.

REPRESENTATIVE REINBOLD offered to research this aspect.

[8:47:54 AM](#)

REPRESENTATIVE DRUMMOND agreed; noting that it's important to ensure the safety of Alaskan children. She asked for further clarification on the intent of subparagraph (C).

REPRESENTATIVE REINBOLD responded that the goal is to protect privacy of students and eliminate access by marketers.

[8:49:59 AM](#)

REPRESENTATIVE SEATON commented on [sub-subparagraph] (v) to political or religious affiliation and agreed there wouldn't be a need to collect that type of information. He suggested that schools need to collect certain data, such as health record information, which may prove vital in certain situations. Even though this would not be made public, it may be a necessity for school officials to have access to student health information. He stressed the importance of not attaching specific names to the data; however, he acknowledged that the collection is important, but it should not be published.

[8:51:41 AM](#)

REPRESENTATIVE LEDOUX pointed out another example of medical necessity could be relevant such as information that a student with the AIDS virus "bit" another student.

CHAIR GATTIS agreed that allergies and emergency numbers are important to collect.

REPRESENTATIVE REINBOLD added that it is important to note proposed sub-subparagraph (iii) indicates "without the written consent of a parent or legal guardian." She recalled a scenario to illustrate that some type of protection for children is important.

[8:53:51 AM](#)

REPRESENTATIVE LEDOUX noted that in some situations a parent may not want to disclose information, such as that their child has AIDS, but it may still be relevant information for the school to know.

[8:54:16 AM](#)

REPRESENTATIVE DRUMMOND acknowledged that type of information may delve into a delicate subject area, but many reasons for full disclosure on medical history exist. She offered her

belief that individual schools already handle these issues. She noted the bill appears to be focused on digital data. The area of medical assistance in schools is becoming more minimal and she suggested avoiding this in the bill.

[8:56:10 AM](#)

REPRESENTATIVE REINBOLD pointed out that HB 257 is designed to protect student information and ensure privacy around data that is collected.

REPRESENTATIVE DRUMMOND directed attention to subparagraph (C) of Version Y, which states that the board shall adopt policies and procedures that "prohibit collecting and reporting student data pertaining to" and under sub-subparagraph (iii) and it goes on to identify "medical and health records without the written consent of the student's parent or guardian" She said dealing with students on a day-to-day basis at a school is different from collecting and reporting student data. She thought it'd be important to know if an elementary school had three diabetic students to address issues that may require having a visiting nurse. She offered her belief that individual students aren't covered by the bill.

MR. VERHAGEN agreed. He acknowledged the parents will want to ensure their children get appropriate care at school and likely would report health issues such as diabetes.

[8:58:43 AM](#)

MR. VERHAGEN directed attention to subparagraph (D) of Version Y, which requires schools to have a detailed data security plan that includes ways to address privacy, authentication, breaches in security, training, encryption, and other data retention and disposition practices.

MR. VERHAGEN finished by noting proposed Sec. 6 would cross-reference the definition to proposed Sec. 5 for "student data."

[9:00:02 AM](#)

JOSEPH CHATFIELD said this bill is a good start towards protecting student privacy although it doesn't go quite far enough. He shared some of the concerns expressed today. The health records issues are ones already taken care of by the health department, such as issues related to communicable diseases. Thus, this bill provides duplicate efforts and health

records don't need to be included, unless a condition has a direct effect on others. He related a personal scenario to illustrate the volume of documents requiring signatures in order for his child to attend a school field trip, including permission to allow access to all of his child's medical records, which isn't relevant. The Health Insurance Portability and Accountability Act (HIPAA) laws protect patients and safeguard this information. Furthermore, public health nurses work closely with the public schools. Therefore, other than targeted items, such as diabetes or allergies, the health information should not be collected. He also strongly objected to collecting any data on religion or political affiliation. He thanked members.

[9:05:29 AM](#)

REPRESENTATIVE DRUMMOND reiterated that to have health care record access for field trip related activities is important. She recalled a news report in which a vehicle filled with California students on a field trip was involved in a serious accident, which emphasizes that the need for medical information may arise.

CHAIR GATTIS also related her experience as a chaperone on school trips and the importance of having access to pertinent health and parent contact information.

REPRESENTATIVE LEDOUX acknowledged that it can be difficult to ascertain what is pertinent until an accident occurs.

CHAIR GATTIS acknowledged that it's important for the schools to retain some information, but acknowledged that parents may feel very uncomfortable providing specific information.

[9:09:01 AM](#)

REPRESENTATIVE SEATON commented that the availability of school nurses varies throughout the state as does the access to public health nurses. For example, he noted that two nurses cover the entire Kenai Peninsula.

CHAIR GATTIS agreed that school nurses are often shared. She asked what the EED is doing in regards to student privacy. She recognized that some states in the Lower 48 have experienced privacy breaches.

[9:11:56 AM](#)

LES MORSE, Deputy Commissioner, Office of the Commissioner, Department of Education and Early Development (EED), understood the intent of HB 257 is to protect student data and the department is clear and cautious in this regard. He stated HB 257 is fairly complex. He related that the department follows the Family Education Rights to Privacy Act (FERPA), which provides school districts with guidance. This law indicates what information can be disclosed and what can't be disclosed. It also requires districts to provide public notice and notice to all families at the beginning of the year informing them of family rights. Another law he is less familiar with is HIPAA; however, this law does provide additional privacy protections. With respect to the new assessments, the department has been assessing students for the state for many years.

MR. MORSE indicated that the department has been collecting individual student data using a student identifier for over ten years. He indicated that the student identifier number and name is confidential information. He recapped that disclosure of student data is treated with the greatest respect and security by districts and the department. The department does not intend to treat data any differently than it currently does. He understood that some people have expressed concerns about consortiums having access to student data and the state is no longer part of any consortium. The state has contracted with an individual enterprise for testing, but since the 1990s has developed and used a state test. He reiterated the department doesn't plan on any changes.

[9:16:17 AM](#)

REPRESENTATIVE REINBOLD expressed interest in working with the department and others to hone the focus of the bill.

[9:17:07 AM](#)

REPRESENTATIVE SEATON referred to pages 2-3, to proposed Sec. 4 of Version Y, noting that the definition of "student data" may require clarification.

[HB 257 was held over].

HB 365-PERFORMANCE SCHOLARSHIP: QUALIFYING EXAM

[9:18:01 AM](#)

CHAIR GATTIS announced that the final order of business would be HOUSE BILL NO. 365, "An Act relating to the Alaska performance scholarship."

[9:18:33 AM](#)

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, speaking as prime sponsor of HB 365, explained that the Alaska Performance Scholarship (APS) started in 2010 and eligibility for the ASP program is determined by taking a rigorous curriculum, having certain grade point average (GPA) cutoff scores, plus cutoff scores on SAT, ACT and WorkKeys' tests. He indicated that the WorkKeys is used as an assessment for career and technical certificated programs; however, over 200 students were denied the APS but had enrolled in [Associate] degree programs. He indicated the intent of HB 365 is to engage students who are not college bound but select career and technical fields and training. If these students have already taken a rigorous high school academic program, they should be eligible to use the APS to obtain an Associate's degree. He pointed out the cut score used for WorkKeys is set by the department and state school board at 13; however, many students surpassed that level. The legislature imposed a restriction for students on a career and technical path that doesn't allow them to use the APS for a degree program. Therefore, this bill allows WorkKeys to allow qualified students to change to a college path to use the APS to obtain either an Associate's Degree or to participate in a certificate program.

[9:21:43 AM](#)

REPRESENTATIVE SEATON directed attention to a document in members' packets entitled, "2013-14 Student Data from Kenai Peninsula Borough School District." He reported that some students took all three exams and this chart tabulates scores from lowest to highest by WorkKeys, SAT, and ACT scores. He also pointed out that the corresponding scores were different than those used by the Commission on Postsecondary Education. Although his goal is not to establish any cut scores, which is best performed by the EED, the Commission on Postsecondary Education, and the State School Board, the relative scores should prove helpful in creating opportunities for students to pursue higher education by allowing them to use the APS program to pursue different academic or career paths.

[9:24:38 AM](#)

CHAIR GATTIS commented that the vocational aspect of the Alaska Performance Scholarship (APS) program appears to have "a glitch." She understood the intent of HB 365 is to give vocational technical students the same opportunities as college bound students.

REPRESENTATIVE SEATON agreed and indicated that if the cut score is at an appropriate level, that it shouldn't preclude students from qualifying for the APS program.

[The committee treated it as though public testimony had been closed.]

[9:26:30 AM](#)

REPRESENTATIVE DRUMMOND moved to report HB 365 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 365 was reported from the House Education Standing Committee.

[9:27:23 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Education Standing Committee meeting was adjourned at 9:27 a.m.