

[DISCUSSION DRAFT]

APRIL 6, 2015

114TH CONGRESS
1ST SESSION

H. R. _____

To amend the General Education Provisions Act to strengthen privacy
protections for students and parents.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the General Education Provisions Act to
strengthen privacy protections for students and parents.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “_____ Act”.

5 **SEC. 2. PROTECTION OF THE RIGHTS AND PRIVACY OF**
6 **PARENTS AND STUDENTS.**

7 Section 444 of the General Education Provisions Act
8 (20 U.S.C. 1232g) is amended to read as follows:

1 **“SEC. 444. PROTECTION OF THE RIGHTS AND PRIVACY OF**
2 **PARENTS AND STUDENTS.**

3 “(a) IN GENERAL.—No funds shall be made available
4 under any applicable program to any educational agency
5 or institution unless such agency or institution complies
6 with the following requirements:

7 “(1) PARENTAL ACCESS.—Except as provided
8 in subsection (b), the educational agency or institu-
9 tion shall not deny or effectively prevent the parents
10 of students who are or have been in attendance at
11 a school of such agency or at such institution, as the
12 case may be, the right to inspect and review the edu-
13 cational records of their children. If any material or
14 document in the education record of a student in-
15 cludes information on more than one student, a par-
16 ent shall have the right to inspect and review only
17 such part of such material or document that relates
18 to such parent’s child.

19 “(2) REASONABLE RESPONSE TIME.—The edu-
20 cational agency or institution shall establish appro-
21 priate procedures for the granting of a request by
22 parents for access to the education records of their
23 children within a reasonable period of time, but in
24 no case more than 30 days after the request has
25 been made.

1 “(3) INSPECTION AND REVIEW.—The agency or
2 institution shall not deny the parents of students the
3 right to inspect and review the education records
4 maintained by the State educational agency on their
5 children who are or have been in attendance at any
6 school of an educational agency or institution that is
7 subject to the provisions of this section.

8 “(4) ADJUSTMENTS TO RECORD.—The edu-
9 cational agency or institution shall provide parents
10 of students who are or have been in attendance at
11 a school of such agency or at such institution an op-
12 portunity to—

13 “(A) challenge and correct the content of
14 the record that is inaccurate or misleading at
15 the time of attendance or otherwise in violation
16 of privacy rights of students through a hearing
17 by such agency or institution, in accordance
18 with the regulations of the Secretary; and

19 “(B) insert into such records a written ex-
20 planation of the parents respecting the content
21 of such records.

22 “(5) RELEASE OF RECORDS WITHOUT PAREN-
23 TAL CONSENT.—The educational agency or institu-
24 tion shall not permit the release of education records
25 (or personally identifiable information contained

1 therein other than directory information) of students
2 without the written consent of their parents to any
3 individual, agency, or organization, **[person?]** other
4 than to—

5 “(A) other school officials, including teach-
6 ers within the educational institution or local
7 educational agency, who have been determined
8 by such agency or institution to have legitimate
9 educational interests, including the educational
10 interests of the child for whom consent would
11 otherwise be required;

12 “(B) officials of other schools or school
13 systems in which the student seeks or intends
14 to enroll, upon condition that the student’s par-
15 ents be notified of the transfer, receive a copy
16 of the record if desired, and have an oppor-
17 tunity for a hearing to challenge the content of
18 the record;

19 “(C) officials working for or on behalf of
20 the following for audit or evaluation or enforce-
21 ment **[, including monitoring]**—

22 “(i) authorized representatives of (I)
23 the Comptroller General of the United
24 States, (II) the Secretary, (III) State edu-
25 cational authorities, or (IV) the Food and

1 Nutrition Service for purposes of subpara-
2 graph (L); or

3 “(ii) authorized representatives of the
4 Attorney General for law enforcement pur-
5 poses;

6 “(D) officials in connection with a stu-
7 dent’s application for, or receipt of, financial
8 aid;

9 “(E) State and local officials or authorities
10 to whom such information is specifically allowed
11 to be reported or disclosed pursuant to State
12 statute regarding the juvenile justice system, in-
13 cluding truancy;

14 “(F) organizations conducting studies for,
15 or on behalf of, educational agencies or institu-
16 tions so long as—

17 “(i) such studies are conducted in
18 such a manner as will not permit the per-
19 sonal identification of students and their
20 parents by persons other than representa-
21 tives of such organizations and such infor-
22 mation will be destroyed when no longer
23 needed for the purpose for which it is con-
24 ducted;

1 【“(ii) parents have been notified of
2 the study and have had a reasonable
3 amount of time to opt out; and】

4 “(iii) the organization has agreed to
5 and has appropriate security that meets
6 the requirements under paragraphs (8),
7 (11), and (12);

8 “(G) accrediting organizations in order to
9 carry out their accrediting functions;

10 “(H) parents of a dependent student of
11 such parents, as defined in section 152 of the
12 Internal Revenue Code of 1986;

13 “(I) in connection with an emergency, ap-
14 propriate persons if the knowledge of such in-
15 formation is necessary to protect the health or
16 safety of the student or other persons;

17 “(J) the entity or persons designated in a
18 Federal grand jury subpoena, in which case the
19 court shall order, for good cause shown, the
20 educational agency or institution (and any offi-
21 cer, director, employee, agent, or attorney for
22 such agency or institution) on which the sub-
23 poena is served, to not disclose to any person
24 the existence or contents of the subpoena or

1 any information furnished to the grand jury in
2 response to the subpoena;

3 “(K) the entity or persons designated in
4 any other subpoena issued for a law enforce-
5 ment purpose, in which case the court or other
6 issuing agency may order, for good cause
7 shown, the educational agency or institution
8 (and any officer, director, employee, agent, or
9 attorney for such agency or institution) on
10 which the subpoena is served, to not disclose to
11 any person the existence or contents of the sub-
12 poena or any information furnished in response
13 to the subpoena;

14 “(L) the Secretary of Agriculture, or au-
15 thorized representative from the Food and Nu-
16 trition Service acting on behalf of the Food and
17 Nutrition Service, for the purposes of con-
18 ducting program monitoring, evaluations, and
19 performance measurements of State and local
20 educational and other agencies and institutions
21 receiving funding or providing benefits of 1 or
22 more programs authorized under the Richard
23 B. Russell National School Lunch Act (42
24 U.S.C. 1751 et seq.) or the Child Nutrition Act
25 of 1966 (42 U.S.C. 1771 et seq.) for which the

1 results will be reported in an aggregate form
2 that does not identify any individual, on the
3 conditions that—

4 “(i) any data collected under this sub-
5 paragraph shall be protected in a manner
6 that will not permit the personal identifica-
7 tion of students and their parents by other
8 than the authorized representatives of the
9 Secretary;

10 “(ii) any personally identifiable data
11 shall be destroyed when the data are no
12 longer needed for program monitoring,
13 evaluations, and performance measure-
14 ments; and

15 “(iii) the parents of the student have
16 been notified that the student’s educational
17 records will be released for the purposes
18 described in this subparagraph;

19 “(M) an agency caseworker or other rep-
20 resentative of a State or local child welfare
21 agency, or tribal organization (as defined in
22 section 4 of the Indian Self-Determination and
23 Education Assistance Act (25 U.S.C. 450b)),
24 who has the right to access a foster youth’s
25 case plan, as defined and determined by the

1 State or tribal organization, when such agency
2 or organization is legally responsible, in accord-
3 ance with State or tribal law, for the care and
4 protection of the student, provided that the
5 education records, or the personally identifiable
6 information contained in such records, of the
7 student will not be disclosed by such agency or
8 organization, except to an individual or entity
9 engaged in addressing the student's education
10 needs and authorized by such agency or organi-
11 zation to receive such disclosure and such dis-
12 closure is consistent with the State or tribal
13 laws applicable to protecting the confidentiality
14 of a student's education records (except that
15 nothing in this subparagraph shall prevent a
16 State from further limiting the number or type
17 of State or local officials who will continue to
18 have access thereunder);

19 “(N) a party in compliance with paragraph
20 (11), as long as adequate parental notice is
21 given regarding such access and the parent is
22 **【**given a reasonable amount of time to opt out
23 of such sharing**】**; or

1 “(O) an education service provider that is
2 providing services to a school official and is in
3 compliance with paragraphs (8), (11), and (12).

4 “(6) PROHIBITION ON RELEASE OF PERSON-
5 ALLY IDENTIFIABLE INFORMATION.—The edu-
6 cational agency or institution shall not have a policy
7 or practice of releasing, or providing access to, any
8 personally identifiable information in education
9 records other than directory information, or as is
10 permitted under paragraph (1), unless—

11 “(A) there is written consent from the stu-
12 dent’s parents specifying records to be released,
13 the reasons for such release, and to whom, and
14 with a copy of the records to be released to the
15 student’s parents and the student if desired by
16 the parents; or

17 “(B) except as provided in subparagraphs
18 (J) and (K) of paragraph (5), such information
19 is furnished in compliance with a judicial order,
20 or pursuant to any lawfully issued subpoena,
21 upon condition that parents and the students
22 are notified of all such orders or subpoenas in
23 advance of the compliance therewith by the edu-
24 cational institution or agency, except when a
25 parent is a party to a court proceeding involv-

1 ing child abuse and neglect (as defined in sec-
2 tion 3 of the Child Abuse Prevention and
3 Treatment Act (42 U.S.C. 5101 note)) or de-
4 pendency matters, and the order is issued in
5 the context of that proceeding, additional notice
6 to the parent by the educational agency or in-
7 stitution is not required.

8 “(7) RECORDKEEPING.—The educational agen-
9 cy or institution shall maintain a record, kept with
10 the education records of each student, which will in-
11 dicate all individuals (other than those specified [in
12 subsection (b)]), agencies, or organizations [per-
13 sons?] which have requested or obtained access to a
14 student’s education record maintained by such edu-
15 cational agency or institution, and which will indi-
16 cate specifically the legitimate interest that each
17 such person, agency, or organization has in obtain-
18 ing this information. Such record of access shall be
19 available only to parents, to the school official and
20 his assistants who are responsible for the custody of
21 such records, and to the Secretary or his designee as
22 a means of monitoring compliance with this section.

23 “(8) SECURITY PRACTICES.—The educational
24 agency or institution shall establish, implement, and

1 enforce policies and procedures regarding informa-
2 tion security practices that—

3 “(A) serve to protect the education records
4 and personally identifiable information held or
5 maintained by the educational agency or insti-
6 tution; and

7 “(B) require any party that maintains or
8 stores such personally identifiable information
9 to follow the information security practices es-
10 tablished under this paragraph.

11 “(9) DUTY TO INFORM.—The educational agen-
12 cy or institution shall effectively inform the parents
13 of students, or the students (if such students are 18
14 years of age or older, or are attending an institution
15 of higher education) of the rights accorded them by
16 this section.

17 “(10) DESIGNATED OFFICIAL.—The edu-
18 cational agency or institution shall designate an offi-
19 cial who shall be responsible for maintaining the se-
20 curity of the education records maintained by such
21 agency or institution.

22 “(11) WRITTEN AGREEMENT.—Before sharing
23 information with a party, the educational agency or
24 institution shall enter into a contract, memorandum

1 of understanding, or other means of written agree-
2 ment with such party, which shall include—

3 “(A) clear provisions outlining how and
4 what information shall be transferred to the
5 party;

6 “(B) a description of any subcontractor or
7 person acting for the party approved by the
8 educational agency or institution for providing
9 assistance to the party in carrying out its duties
10 under the agreement;

11 “(C) an agreement by the party to prohibit
12 any other party from having access to person-
13 ally identifiable information, except that the
14 agreement described in this subparagraph shall
15 not apply—

16 “(i) when collection of personally iden-
17 tifiable information is specifically author-
18 ized by Federal law; or

19 “(ii) with respect to a subcontractor
20 or person acting for the party described in
21 subparagraph (B);

22 “(D) guarantees that personally identifi-
23 able information will be secured by digital or
24 physical means by such party and an agreement
25 to demonstrate the digital or physical means

1 that will secure such information from unau-
2 thorized access;

3 “(E) the penalties for a security breach in
4 violation of the agreement; and

5 “(F) a requirement that the party notify
6 parents and students of the policies, procedures,
7 and means the party uses to protect the secu-
8 rity of personally identifiable information held
9 by the party.

10 “(12) REQUIREMENTS FOR ACCESS.—

11 “(A) The educational agency or institution
12 shall ensure that any party with access to edu-
13 cation records with personally identifiable infor-
14 mation complies with the following:

15 “(i) Any education records that are
16 held by the party shall be handled and
17 stored in a manner that meets or surpasses
18 the privacy protection that would be pro-
19 vided if the records were held or stored by
20 an educational agency or institution in ac-
21 cordance with this section, to include pro-
22 viding parents with—

23 [“(I) the right to access, either
24 through the educational agency or in-
25 stitution providing access to the party

1 or the party directly if agreed to in
2 paragraph (11), the personally identi-
3 fiable information held about their
4 students by the party, to the same ex-
5 tent and in the same manner as pro-
6 vided in paragraph (1); and】

7 【“(II) a process to challenge,
8 correct, or delete any inaccurate, mis-
9 leading, or otherwise inappropriate
10 data in any education records of such
11 student that are held by the party,
12 through a hearing by the agency or
13 institution providing the party with
14 access, in accordance with paragraph
15 (4).】

16 “(ii) The party shall maintain a
17 record of all individuals, agencies, or orga-
18 nizations 【persons?】 that have requested
19 or obtained access to the education records
20 of a student held by the party, in the same
21 manner as is required under paragraph
22 (7).

23 “(iii) The party shall have policies or
24 procedures in place regarding information
25 security practices regarding education

1 records, in accordance with paragraph (8),
2 and shall meet the requirements of each
3 agreement with an educational agency or
4 institution entered into pursuant to para-
5 graph (11).

6 “(B) The educational agency or institution
7 shall not transfer personally identifiable infor-
8 mation to a party or any subcontractor or per-
9 son acting for a party, unless such agency or
10 institution and the party have an agreement
11 that meets the requirements of paragraph (11),
12 and the party is in compliance with the require-
13 ments of paragraphs (8) and (12). If a party
14 permits access to information or fails to destroy
15 information in violation of this section, the edu-
16 cational agency or institution shall be prohib-
17 ited from permitting access to information from
18 education records to that party or individuals
19 who worked for or with such party at that time
20 for a period of not less than 12 years.

21 “(13) PARENTAL NOTICE ON DISCLOSURE OF
22 INFORMATION.—

23 “(A) Any educational agency or institution
24 making public directory information shall—

1 “(i) give public notice of the cat-
2 egories of information which it has des-
3 ignated as such information with respect to
4 each student attending the institution or
5 agency;

6 “(ii) provide the information in such
7 public notice to the parents of each such
8 student in an easy-to-understand notice;
9 and

10 “(iii) allow a reasonable period of time
11 after such notice has been given under
12 clause (ii), but not less than 15 days, for
13 a parent to inform the institution or agen-
14 cy that any or all of the information des-
15 ignated should not be released without the
16 parent’s prior consent.

17 “(B) Any educational agency or institution
18 sharing information contained in an education
19 record shall—

20 “(i) give parents notice of the sharing
21 in an easy-to-understand format; and

22 “(ii) make available the written agree-
23 ments between the agency or institution
24 and the party receiving the information.

1 “(b) RESTRICTIONS ON STUDENT ACCESS.—Nothing
2 in this section shall be construed to make available to stu-
3 dents in institutions of higher education the following ma-
4 terials:

5 “(1) Financial records of the parents of the
6 student or any information contained therein.

7 “(2) Confidential letters and statements of rec-
8 ommendation, which were placed in the education
9 records prior to January 1, 1975, if such letters or
10 statements are not used for purposes other than
11 those for which they were specifically intended.

12 “(3) If the student has signed a waiver of the
13 student’s right of access in accordance with sub-
14 section (c), confidential recommendations—

15 “(A) respecting admission to any edu-
16 cational agency or institution;

17 “(B) respecting an application for employ-
18 ment; and

19 “(C) respecting the receipt of an honor or
20 honorary recognition.

21 “(c) WAIVER.—A student or a person applying for
22 admission may waive the right to access to confidential
23 statements described in subsection (b)(3), except that such
24 waiver shall apply to recommendations only if—

1 “(1) the student is, upon request, notified of
2 the names of all persons making confidential rec-
3 ommendations; and

4 “(2) such recommendations are used solely for
5 the purposes for which they were specifically in-
6 tended. Such waivers may not be required as a con-
7 dition for admission to, receipt of financial aid from,
8 or receipt of any other services or benefits from such
9 agency or institution.

10 “(d) ACCESS BY AUTHORIZED REPRESENTATIVES.—

11 “(1) An authorized representative shall not re-
12 lease any educational records or personally identifi-
13 able information collected while serving as an au-
14 thorized representative to any individual, agency, or
15 organization, [person?] other than the official under
16 whom the authorized representative is under the di-
17 rect control.

18 “(2) An authorized representative may collect
19 and share personally identifiable information when—

20 “(A) there is written consent from the stu-
21 dent’s parent specifying the records to be re-
22 leased or the collection of personally identifiable
23 information is specifically authorized by Federal
24 law as described in paragraph (3), and

1 “(B) the authorized representative is in
2 compliance with the requirements of paragraphs
3 (8), (11), and (12) of subsection (a).

4 “(3) Nothing contained in this subsection shall
5 preclude an authorized representative from having
6 access to student or other records which may be nec-
7 essary in connection with the audit and evaluation of
8 a federally supported education program, or in con-
9 nection with the enforcement [, including moni-
10 toring,] of the Federal legal requirements which re-
11 late to such program.

12 “(e) ACCESS BY STATE AND LOCAL OFFICIALS.—
13 Nothing in this section shall be construed to prohibit State
14 and local educational officials from having access to stu-
15 dent or other records which may be necessary in connec-
16 tion with the audit and evaluation of any federally sup-
17 ported or State-supported education program or in con-
18 nection with the enforcement [, including monitoring,] of
19 the Federal legal requirements which relate to any such
20 program, subject to the conditions specified in this section.

21 “(f) DISCLOSURE IN DISCIPLINARY PROCEEDINGS.—

22 “(1) Nothing in this section shall be construed
23 to prohibit an institution of higher education from
24 disclosing, to an alleged victim of any crime of vio-
25 lence (as that term is defined in section 26 of title

1 18, United States Code), or a nonforcible sex of-
2 fense, the final results of any disciplinary proceeding
3 conducted by such institution against the alleged
4 perpetrator of such crime or offense with respect to
5 such crime or offense.

6 “(2) Nothing in this section shall be construed
7 to prohibit an institution of postsecondary education
8 from disclosing the final results of any disciplinary
9 proceeding conducted by such institution against a
10 student who is an alleged perpetrator of any crime
11 of violence (as that term is defined in section 16 of
12 title 18, United States Code), or a nonforcible sex
13 offense, if the institution determines as a result of
14 that disciplinary proceeding that the student com-
15 mitted a violation of the institution’s rules or poli-
16 cies with respect to such crime or offense.

17 “(3) For the purpose of this paragraph, the
18 final results of any disciplinary proceeding—

19 “(A) shall include only the name of the
20 student, the violation committed, and any sanc-
21 tion imposed by the institution on that student;
22 and

23 “(B) may include the name of any other
24 student, such as a victim or witness, only with
25 the written consent of that other student.

1 “(g) DISCLOSURE UNDER ADAM WALSH CHILD PRO-
2 TECTION AND SAFETY ACT OF 2006.—

3 “(1) Nothing in this section may be construed
4 to prohibit an educational institution from disclosing
5 information provided to the institution under the
6 Adam Walsh Child Protection and Safety Act of
7 2006 (42 U.S.C. 16901 et seq.).

8 “(2) The Secretary shall take appropriate steps
9 to notify educational institutions that disclosure of
10 information described in paragraph (1) is permitted.

11 “(h) MARKETING AND ADVERTISING BAN.—Except
12 for an educational authority sharing information on edu-
13 cation opportunities—

14 “(1) no person with access to education records
15 or student personally identifiable information con-
16 tained in the education record shall market or other-
17 wise advertise directly to students with the use of
18 the information gained through access to personally
19 identifiable information or the education record; and

20 “(2) an educational agency or institution shall
21 not contract or enter into an agreement with an edu-
22 cation service provider that has a policy or practice
23 of using, releasing, or otherwise providing access to
24 personally identifiable information in the education
25 records of a student, without the written consent of

1 the parents of such student, to advertise or market
2 a product or service or for the development of com-
3 mercial products or services, except that this prohi-
4 bition shall not include official school pictures.

5 “(i) REGULATIONS.—

6 “(1) The Secretary, in accordance with this sec-
7 tion and section 446, shall adopt appropriate regula-
8 tions or procedures or identify existing regulations
9 or procedures, which protect the rights of privacy of
10 students and their families in connection with any
11 surveys or data-gathering activities conducted, as-
12 sisted, or authorized by the Secretary or an adminis-
13 trative head of an education agency and ensure that
14 parents are aware of their rights under those sec-
15 tions.

16 “(2) Regulations established under this sub-
17 section shall include provisions controlling the use,
18 dissemination, and protection of such data.

19 “(j) PROHIBITION ON DATA GATHERING.—No survey
20 or data-gathering activities shall be conducted by the Sec-
21 retary, or an administrative head of an education agency
22 under an applicable program, unless such activities are au-
23 thorized by law.

24 “(k) CONSENT OF STUDENT.—For the purposes of
25 this section, whenever a student has attained 18 years of

1 age, or is attending an institution of higher education, the
2 permission or consent required of and the rights accorded
3 to the parents of the student shall thereafter only be re-
4 quired of and accorded to the student.

5 “(l) ENFORCEMENT.—The Secretary shall take ap-
6 propriate actions to enforce this section and to address
7 violations of this section by an educational agency or insti-
8 tution or a party with which such agency or institution
9 has agreed to share information, in accordance with this
10 Act, which may include action to terminate Federal assist-
11 ance if there is not voluntary compliance [and fines of
12 \$2,000 per student harmed up to a maximum of
13 \$500,000].

14 “(m) DISCLOSURE OF DISCIPLINARY ACTIONS.—
15 Nothing in this section shall prohibit an educational agen-
16 cy or institution from—

17 “(1) including appropriate information in the
18 education record of any student concerning discipli-
19 nary action taken against such student for conduct
20 that posed a significant risk to the safety or well-
21 being of that student, other students, or other mem-
22 bers of the school community; and

23 “(2) disclosing such information to teachers
24 and school officials, including teachers and school of-

1 officials in other schools, who have legitimate edu-
2 cational interests in the behavior of the student.

3 “(n) COMPLIANCE OFFICE.—

4 “(1) The Secretary shall establish or designate
5 an office within the Department for the purpose of
6 monitoring compliance with this section, inves-
7 tigating, processing, reviewing, and adjudicating vio-
8 lations of this section and investigating, processing,
9 reviewing, and adjudicating complaints which may
10 be filed concerning alleged violations of this section.

11 “(2) Except for the conduct of hearings, none
12 of the functions of the Secretary under this section
13 shall be carried out in any of the regional offices of
14 such Department.

15 “(o) DISCLOSURE OF DRUG AND ALCOHOL VIOLA-
16 TIONS.—

17 “(1) IN GENERAL.—Nothing in this Act or the
18 Higher Education Act of 1965 shall be construed to
19 prohibit an institution of higher education from dis-
20 closing, to a parent or legal guardian of a student,
21 information regarding any violation of any Federal,
22 State, or local law, or of any rule or policy of the
23 institution, governing the use or possession of alco-
24 hol or a controlled substance, regardless of whether

1 that information is contained in the student's edu-
2 cation records—

3 “(A) the student is under the age of 21;

4 and

5 “(B) the institution determines that the
6 student has committed a disciplinary violation
7 with respect to such use or possession.

8 “(2) STATE LAW REGARDING DISCLOSURE.—

9 Nothing in subsection (n) shall be construed to su-
10 perseede any provision of State law that prohibits an
11 institution of higher education from making the dis-
12 closure described in subsection (a)(1).

13 “(3) PROTECTION OF EDUCATIONAL AGENCY
14 OR INSTITUTION.—An educational agency or institu-
15 tion that, in good faith, produces education records
16 in accordance with an order issued under this sub-
17 section shall not be liable to any person for that pro-
18 duction.

19 “(p) INVESTIGATION AND PROSECUTION OF TER-
20 RORISM.—

21 “(1) IN GENERAL.—Notwithstanding sub-
22 sections (a) through (o) or any provision of State
23 law, the Attorney General (or any Federal officer or
24 employee, in a position not lower than an Assistant
25 Attorney General, designated by the Attorney Gen-

1 eral) may submit a written application to a court of
2 competent jurisdiction for an ex parte order requir-
3 ing an educational agency or institution to permit
4 the Attorney General (or his designee) to—

5 “(A) collect education records in the pos-
6 session of the educational agency or institution
7 that are relevant to an authorized investigation
8 or prosecution of an offense listed in section
9 2332b(g)(5)(B) of title 18, United States Code,
10 or an act of domestic or international terrorism
11 as defined in section 2331 of that title; and

12 “(B) for official purposes related to the in-
13 vestigation or prosecution of an offense de-
14 scribed in paragraph (1)(A), retain, dissemi-
15 nate, and use (including as evidence at trial or
16 in other administrative or judicial proceedings)
17 such records, consistent with such guidelines as
18 the Attorney General, after consultation with
19 the Secretary, shall issue to protect confiden-
20 tiality.

21 “(2) APPLICATION AND APPROVAL.—

22 “(A) An application under paragraph (1)
23 shall certify that there are specific and
24 articulable facts giving reason to believe that

1 the education records are likely to contain in-
2 formation described in paragraph (1)(A).

3 “(B) The court shall issue an order de-
4 scribed in paragraph (1) if the court finds that
5 the application for the order includes the certifi-
6 cation described in subparagraph (A).

7 “(3) RECORDKEEPING EXCEPTION.—Subsection
8 (a)(7) does not apply to education records subject to
9 a court order under this subsection.

10 “(q) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 “(1) AUTHORIZED REPRESENTATIVE.—The
13 term ‘authorized representative’ means a person
14 who—

15 [“(A) is an employee or contracted indi-
16 vidual of an organization;]

17 “(B) is designated as an authorized rep-
18 resentative by—

19 “(i) the Attorney General for purposes
20 of subsection (a)(5)(C)(ii);

21 “(ii) Comptroller General of the
22 United States;

23 “(iii) the Secretary;

24 “(iv) the State or local educational
25 authorities; or

1 “(v) the Food and Nutrition Service
2 for purposes of subsection (a)(5)(L); and

3 【“(C) is under the direct control, as a con-
4 tractor or employee, of an official described in
5 subparagraph (B).】

6 “(2) DIRECTORY INFORMATION.—The term ‘di-
7 rectory information’ 【includes, with respect to a stu-
8 dent, the student’s name, address, telephone listing,
9 date and place of birth, major field of study, partici-
10 pation in officially recognized activities and sports,
11 weight and height (if the student is a member of an
12 athletic team), dates of attendance, degrees and
13 awards received, and the name of the educational
14 agency or institution most recently attended by the
15 student】.

16 “(3) EDUCATIONAL AGENCY OR INSTITUTION.—
17 The term ‘educational agency or institution’ means
18 any public or private agency or institution which
19 is—

20 “(A) the recipient of funds under any ap-
21 plicable program; and

22 “(B) principally engaged in the provision
23 of education to students or which directs and
24 controls public elementary schools, public sec-

1 ondary schools, or institutions of higher edu-
2 cation.

3 “(4) EDUCATION PROGRAM.—The term ‘edu-
4 cation program’ means any program that—

5 “(A) is principally engaged in the provision
6 of education, including early childhood edu-
7 cation, elementary and secondary education,
8 higher education, special education, employment
9 or workforce development, career and technical
10 education, and adult education; and

11 “(B) is administered by an educational
12 agency or institution.

13 “(5) EDUCATION RECORDS.—

14 “(A) Except as provided in subparagraph
15 (B), the term ‘education records’ means those
16 records, files, documents, and other materials
17 which contain information directly related to a
18 student and are—

19 “(i) maintained, electronically or
20 physically, by an educational agency or in-
21 stitution, or by a person acting for such
22 agency or institution;

23 “(ii) accessible, collected, used, or
24 maintained by an education service pro-

1 vider **【**in the course of providing services
2 to a school official**】**; or

3 “(iii) created by or for the State edu-
4 cational authority even though a student
5 who attends a school subject to this section
6 may not attend a school run by such State
7 educational authority.

8 “(B) The term ‘education records’ does not
9 include—

10 “(i) records of instructional, super-
11 visory, and administrative personnel and
12 educational personnel ancillary thereto
13 which are in the sole possession of the
14 maker thereof and which are not accessible
15 or revealed to any other person;

16 “(ii) records maintained by a law en-
17 forcement unit of the educational agency
18 or institution that were created by that law
19 enforcement unit for the purpose of law
20 enforcement;

21 “(iii) in the case of persons who are
22 employed by an educational agency or in-
23 stitution but who are not in attendance at
24 such agency or institution, records made
25 and maintained in the normal course of

1 business which relate exclusively to such
2 person in that person's capacity as an em-
3 ployee and are not available for use for any
4 other purpose; or

5 “(iv) records on a student who is 18
6 years of age or older, or is attending an in-
7 stitution of postsecondary education, which
8 are made or maintained by a physician,
9 psychiatrist, psychologist, or other recog-
10 nized professional or paraprofessional act-
11 ing in his professional or paraprofessional
12 capacity, or assisting in that capacity, and
13 which are made, maintained, or used only
14 in connection with the provision of treat-
15 ment to the student, and are not available
16 to anyone other than the student or per-
17 sons providing such treatment, except that
18 such records can be personally reviewed by
19 a physician or other appropriate profes-
20 sional of the student's choice.

21 “(6) EDUCATION SERVICE PROVIDER.—The
22 term ‘education service provider’ means any pro-
23 vider, other than a school official or employee, of
24 services developed and targeted to students for an
25 educational purpose, whether specifically marketed

1 to schools, institutions of higher education, edu-
2 cational agency or institution employees or officers,
3 or other individuals primarily engaged in the provi-
4 sion of education services.

5 “(7) INSTITUTION OF HIGHER EDUCATION.—
6 The term ‘institution of higher education’ has the
7 meaning given the term in section 102 of the Higher
8 Education Act of 1965 (20 U.S.C. 1002).

9 “(8) PARTY.—

10 “(A) Except as provided in subparagraph
11 (B), the term ‘party’ means any person in pos-
12 session of education records or personally iden-
13 tifiable information contained in an education
14 record.

15 “(B) The term ‘party’ does not include—

16 “(i) the student to whom an education
17 record pertains or a parent of such stu-
18 dent;

19 “(ii) an educational agency or institu-
20 tion that maintains the education record or
21 personally identifiable information, an em-
22 ployee or officer of such educational agency
23 or institution, or an individual, agency, or
24 organization **[person?]** acting for such
25 educational agency or institution;

1 “(iii) an authorized representative; or

2 “(iv) an official indicated in subpara-
3 graphs (A) through (M) and (O) of sub-
4 section (a)(5).

5 “(9) PERSONALLY IDENTIFIABLE INFORMA-
6 TION.—The term ‘personally identifiable informa-
7 tion’ means—

8 “(A) any information (such as the stu-
9 dent’s name, Social Security number, email ad-
10 dress, or parent’s name), or compilation of in-
11 formation, in electronic, digital, or paper form
12 that, alone or in combination, is linked or
13 linkable to a specific student that would allow
14 a reasonable person in the school community,
15 who does not have personal knowledge of the
16 relevant circumstances, to identify the student
17 with reasonable certainty;

18 “(B) biometric information, including any
19 record of one or more measurable biological or
20 behavioral characteristics that may be used for
21 automated recognition of a student, such as fin-
22 gerprints, retina and iris patterns, voiceprints,
23 DNA sequence, facial characteristics, and hand-
24 writing; or

1 “(C) information in an education record
2 requested by a person who an educational agen-
3 cy or institution reasonably believes knows the
4 identity of the student to whom the education
5 record relates.

6 “(10) STUDENT.—The term ‘student’ includes
7 any person with respect to whom an educational
8 agency or institution maintains education records or
9 personally identifiable information, but does not in-
10 clude a person who has not been in attendance at
11 such agency or institution.”.

12 **SEC. 3. CONFORMING AMENDMENT.**

13 Section 446(a) of the General Education Provisions
14 Act (20 U.S.C. 1232i(a)) is amended by striking
15 “444(b)(1)(D)” and inserting “444(a)(5)(D)”.

16 **SEC. 4. FERPA REGULATIONS.**

17 (a) REPEAL.—The definition of the term “early child-
18 hood education program” in section 99.3 of title 34, Code
19 of Federal Regulations, is repealed and shall have no legal
20 effect.

21 (b) CERTAIN REGULATION PROHIBITED.—The Sec-
22 retary of Education shall not promulgate or enforce any
23 regulation or rule that defines “early childhood education
24 program” for any purpose under section 444 of the Gen-
25 eral Education Provisions Act (20 U.S.C. 1232g) (com-

1 monly known as the “Family Educational Rights and Pri-
2 vacy Act of 1974”) on or after the date of enactment of
3 this Act.