



DRAFT

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MEMORANDUM IN OPPOSITION

LEGISLATIVE REFERENCE S.2357-A – by Senator Oppenheimer – Education Committee
A.8474-A – by M. of A. Rosenthal – Education Committee

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

SUMMARY OF PROVISIONS

This bill would amend the Education Law by adding a new § 3212-b to proscribe the instances when a school district may disclose directory information about a student to another organization or entity

REASONS FOR OPPOSITION

This bill fundamentally alters well established federal privacy standards related to students directory records, which would hamper or halt a school districts' ability to engage in many necessary school improvement activities, evaluations and services.

Responsibly sharing reliable and representative data on students who attend New York City public schools is essential to school improvement and reform. The Federal Family Educational Rights and Privacy Act ("FERPA") provides detailed, comprehensive guidelines for the disclosure of student information both within schools and school districts and to third parties, such as non-profit researchers, vendors providing student's with important services, entities conducting evaluations of New York City Department of Education (DOE) programs and for other valid reasons that further improvement of instruction.

Existing FERPA guidelines strike an appropriate balance between student confidentiality and the ability of a school district to provide services to students, and to study and evaluate them. For example, currently when the DOE discloses information to vendors, it requires that the vendors keep the information strictly confidential and limits use solely for purposes of providing the services, and for no other commercial purpose.

The proposed bill alters FERPA's guidelines for disclosing directory information about students by limiting the types of information that FERPA allows schools to designate as directory information, and altering the way in which districts must notify parents about their right to opt out. These changes significantly impede the DOE's ability to carry out core initiatives. For example, the DOE is engaged in data sharing agreements with the United States Department of Education and the national recognized non-profit National Student Clearinghouse for which it must designate certain information as directory information. The additional limitations on directory information contained in this bill would cripple this initiative, and bring this activity to a halt.

In addition, FERPA also sets forth a number of circumstances under which student record information can be released to third parties without parental (or adult student) consent. These include exceptions permitting DOE to share student record information with researchers conducting studies on its behalf, and with third-party authorized representatives conducting audits or evaluations of education programs. Another exception permits the DOE to share student record information with contractors, agents and consultants, in order to carry out services on behalf of students. The proposed bill also severely restricts, and in many cases, eliminates the DOE's ability to utilize these exceptions under FERPA to engage in legitimate and needed educational activities. Examples of such activities are numerous. Many involve efforts to improve college and career readiness, with entities such as National Student Clearinghouse (NSC), the City University of New York (CUNY), and the College Board, and the Research Alliance. The bill could halt much or even all of this beneficial activity.

For certain information to be shared, unlike under FERPA, the bill requires the DOE to first obtain parental consent. However, an "opt-in" procedure to share a student's information with non-profit research organizations will prove a significant logistical burden on schools, severely limit whom NYC DOE can provide data on, and bias the overall picture of DOE schools.

While the sponsor's intent is laudable, the bill would effectively prohibit schools from using third party vendors, and would eliminate DOE's ability to provide vital educational services to our schools and students.

Accordingly, it is urged that this bill be disapproved.

Respectfully submitted,

WENDY E. SAUNDERS
Director

JR: 6/6/12