

The Senate Education and Youth Committee offered the following substitute to SB 167:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to
2 address various issues impacting students in public schools in this state, including student
3 data, student competencies, and student testing; to provide for a public process to review
4 changes to content standards in core subjects; to provide for legislative findings; to provide
5 for the establishment of Content Standards Advisory Councils; to authorize the councils to
6 review content standards, assessments, and data collection policies; to provide for
7 subcommittees; to provide for public hearings and public input; to provide for recommended
8 changes; to provide for timelines; to prohibit the state from relinquishing any control over
9 content standards or assessments; to provide for flexibility; to provide for short titles; to
10 establish limitations and requirements regarding student data; to provide for definitions; to
11 provide for limitations on the collection of student information; to provide for limitations on
12 the disclosure of personally identifiable information to third parties; to provide for penalties
13 and enforcement; to provide for related matters; to provide for an effective date; to provide
14 for applicability; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

18 This part shall be known and may be referred to as the "Act to Restore Educational Authority
19 to Georgia Citizens."

SECTION 1-2.

21 The General Assembly finds that:

- 22 (1) The state should establish first-class competencies and content standards that will
23 provide a broad liberal arts education and lead to educated citizens equipped to preserve

24 a self-governing republic of free people who are prepared for postsecondary education and
 25 a career; and
 26 (2) In determining such competencies and content standards, there should be strong citizen
 27 participation in the process.

28 SECTION 1-3.

29 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
 30 revising Code Section 20-2-141, relating to the review of competencies and core curriculum,
 31 as follows:

32 "20-2-141.

33 (a) The State Board of Education shall review content standards in each of the four core
 34 subject areas of mathematics, English language arts, science, and social studies establish
 35 at least once every four ~~five~~ years a review of the adopted competencies and uniformly
 36 sequenced core curriculum by a task force broadly representative of educational interests
 37 and the concerned public. After considering the findings and recommendations of the task
 38 force, the state board shall make such changes in the student competencies lists and core
 39 curriculum as it deems in the best interest of the state and its citizens and shall report such
 40 proposed changes to local school systems and the General Assembly for review. The state
 41 board shall propose changes to such content standards as it deems in the best interest of
 42 students, their parents, teachers, and taxpayers.

43 (b) The state board shall establish and implement a process in accordance with the
 44 requirements of this Code section which includes that:

45 (1) The state board shall review relevant research in the core subject area under review
 46 and identify the content standards where revision is appropriate;

47 (2) The state board shall examine content standards for such core subject area which
 48 have been previously or are currently adopted by Georgia or by other states or countries,
 49 with preference given to states that had standards which were highly rated in national
 50 surveys of state standards before 2010 and to states and countries with highly rated
 51 internationally competitive test results;

52 (3) Through an open and transparent process, the state board shall solicit interested
 53 persons who are eligible to be appointed to and serve on an advisory council convened
 54 pursuant to subsection (c) of this Code section. The state board shall submit all such
 55 names to the Governor, Lieutenant Governor, and Speaker of the House of
 56 Representatives for their consideration for appointment; and

57 (4) The state board shall report its proposed changes to content standards for a core
 58 subject area to such advisory council. Upon receipt of the state board's proposed changes
 59 to content standards, the Council shall immediately begin its review, which may include

60 review of other content standards within the same subject area, state-wide
61 criterion-referenced assessments related to the same subject area, or data collection
62 policies; provided, however, that nothing shall preclude the Council from commencing
63 any review as soon as the Council members are appointed.

64 (c)(1) On a biennial basis, a Content Standards Advisory Council ('Council') shall be
65 convened pursuant to this subsection to review proposed changes by the state board to
66 content standards in core subject areas. Each Council convened pursuant to this
67 subsection shall exist for a term of two years and shall review a specified subject area in
68 each year of its two-year term. The Council shall be composed of 15 members as
69 follows:

70 (A) Nine parent or grandparent representatives, representing public school students;
71 the Governor, the Lieutenant Governor, and the Speaker of the House of
72 Representatives shall each appoint three parent or grandparent representatives, one
73 representative each from the elementary school level, one representative each from the
74 middle school level, and one representative each from the high school level;

75 (B) Three private-sector representatives, appointed by the Governor; and

76 (C) Three postsecondary content specialist education representatives, appointed by the
77 Governor. As used in this subparagraph, the term 'postsecondary content specialist'
78 means someone currently employed or retired, who has taught the subject content at
79 least five years in a postsecondary institution and having an advanced degree,
80 preferably a doctorate, in the subject of study. Specifically, it means English for
81 English language arts standards, mathematics or statistics for mathematics standards,
82 natural sciences and engineering for science standards, and government, economics,
83 history, or political philosophy for social studies standards. Advanced degrees in
84 education of the subject, such as mathematics education or science education, do not
85 qualify for the purpose of this subparagraph.

86 (2) Council members shall possess a bachelor's degree in at least one of the subject areas
87 under review during such member's two-year term or a related subject area at a minimum
88 and have appropriate experience and credentials, as determined by the appointing official.
89 All members of the Council shall be residents of the State of Georgia for at least six
90 months prior to appointment. To the extent possible, the Council shall include balanced
91 representation from urban, suburban, and rural areas and representation from each
92 congressional district. The Council shall elect a chairperson and vice chairperson from
93 among its membership.

94 (3) Council members shall serve a two-year term and may be reappointed once. In the
95 event of a vacancy, such member shall be replaced within 30 days of such vacancy in the

96 same manner as the original appointment made pursuant to paragraph (1) of this
97 subsection.

98 (4) The Council shall establish subcommittees to help carry out its duties and
99 responsibilities under this Code section. Such subcommittees shall include Council
100 members and other appropriate individuals knowledgeable and experienced in the subject
101 area under review, including, but not limited to, retired or currently employed
102 early-childhood development professionals, K-5 content specialists, grades 6-8 content
103 specialists, grades 9-12 content specialists, certified K-5 teachers, certified grades 6-8
104 teachers, and certified grades 9-12 teachers and postsecondary content specialists. Each
105 subcommittee shall elect a chairperson and co-chairperson.

106 (5) Council members and subcommittee members shall be reimbursed for per diem and
107 travel expenses in the same manner as provided for in Code Section 45-7-21. Subject to
108 appropriations, non-public-sector members may receive an honorarium for their services
109 and local school systems may be reimbursed for the cost incurred in hiring substitute
110 teachers in the absence of educators serving on a subcommittee. Council members and
111 subcommittee members, as well as any members of their families or their business
112 entities, shall not have conflicts of interest with regard to actions taken by the Council
113 and shall not accept any money, meals, trips, gifts, or any other favors from any person,
114 business, or organization that would benefit, financially or otherwise, from actions taken
115 by the Council.

116 (d) Any and all meetings conducted by the state board, the Council, or subcommittees of
117 the Council at which content standards are discussed or decided upon shall be subject to
118 Chapter 14 of Title 50, relating to open and public meetings; provided, however, that this
119 shall not apply to assessment instruments reviewed or discussed pursuant to subsection (i)
120 of Code Section 20-2-281.

121 (e) Prior to the 90 day period provided for in subsection (g) of this Code section, the state
122 board shall:

123 (1) Post all proposed changes to content standards on the Department of Education
124 website;

125 (2) Submit all proposed changes to content standards to the Council, Governor,
126 Lieutenant Governor, Speaker of the House of Representatives, chairperson of the Senate
127 Education and Youth Committee, chairperson of the House Committee on Education, and
128 each local school system. Upon receipt of proposed changes from the state board, each
129 local school system shall notify the parents or guardians of its students that proposed
130 content standards are available for review on the department website; and

131 (3) Submit all proposed changes to content standards to the president of each public
132 postsecondary institution in this state. Upon receipt of proposed changes from the state

133 board, the president of each public postsecondary institution in this state shall provide an
134 electronic copy of the proposed changes to the appropriate school deans, department
135 heads, or both, as appropriate, so that, for purposes of illustration only, proposed changes
136 to English language arts standards shall be sent to the heads of English departments.
137 High school mathematics standards shall be sent to the heads of departments of
138 mathematics, engineering, physical and biological sciences, and computer science.

139 (f) The state board shall provide a 90 day period for public review and comment on its
140 proposed content standards and on any other content standards in the same subject area.

141 Within such 90 day period:

142 (1) Each state board member shall conduct at least one public hearing and shall provide
143 notice of such hearing by issuing a press release to print and broadcast media serving the
144 congressional district and providing notice to each local school system within the
145 congressional district. Upon receipt of such notice, each local school system shall notify
146 parents and guardians of all students of such public hearing. The state board shall
147 provide at least one week's notice to each state legislator who represents a portion of the
148 congressional district. The Council shall use its best efforts to have Council members
149 present at each hearing. The state board shall cause minutes of the hearings to be taken
150 and shall distribute such minutes to all state board members and Council members within
151 ten business days of each such public hearing;

152 (2) The state board shall solicit feedback on the proposed content standards or on any
153 other content standards in the same subject area from teachers, parents, and other
154 stakeholders through the development, posting, and advertisement of an online survey
155 and shall accept any comments received via e-mail or United States mail. The state board
156 shall also solicit feedback from appropriate content related organizations, associations,
157 and agencies. All feedback received by the state board shall be made available to the
158 Council; and

159 (3) The Senate Education and Youth Committee and the House Committee on Education
160 may each hold additional public hearings to provide additional opportunity for public
161 comments on the proposed changes and shall submit to the Council any public comments
162 received from the hearings.

163 All public comments received by the state board in the 90 day period shall be part of the
164 public record and shall be maintained by the Department of Education and available for
165 review for at least six years.

166 (g) The Council and its subcommittees shall review the proposals made by the state board
167 and the feedback received pursuant to subsection (f) of this Code section and, with any
168 needed assistance from the department, propose changes to the state board's proposed
169 content standards as it deems appropriate. Any proposed changes by the Council shall be

170 submitted to the state board by the Council in the form of a written report no later than 60
171 days after the expiration of the 90 day period for public review provided in subsection (f)
172 of this Code section. The Council and its subcommittees shall also have the discretion to
173 review and make recommendations on any related content standards in the same subject
174 area, on any state-wide assessments administered pursuant to Code Section 20-2-281 which
175 are criterion-referenced assessments relating to the subject area under review, and on any
176 data collection policies of the Department of Education or Office of Student Achievement.

177 (h)(1) Simultaneously with submitting the written report to the state board pursuant to
178 subsection (g) of this Code section, the Council, through the department, shall provide
179 an electronic copy of the changes proposed by the Council to all members of the Senate
180 Education and Youth Committee and House Committee on Education, to each local
181 school system, and to the president of each public postsecondary institution in this state,
182 and shall make such proposed changes available to the public via Internet posting on the
183 department website.

184 (2) Upon receipt of proposed changes from the Council, each local school system shall
185 again notify the parents or guardians of its students that proposed content standards are
186 available for review on the department website.

187 (3) Upon receipt of proposed changes from the Council, the president of each public
188 postsecondary institution in this state shall provide an electronic copy of the proposed
189 changes to the appropriate school deans, department heads, or both in the same manner
190 as provided in paragraph (3) of subsection (e) of this Code section.

191 (i) After receipt of the revised proposed content standards from the Council, the state
192 board shall take into consideration the recommendations of the Council, and the state
193 board, in an open public meeting, shall make changes to the content standards as it deems
194 in the best interest of students, their parents, teachers, and this state's citizens. The
195 adoption of content standards pursuant to this Code section shall not be subject to Article
196 1 of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The state board
197 shall report such approved content standards to local school systems and the General
198 Assembly and post such approved content standards in an easily accessible location on the
199 department website.

200 (j) The requirements contained in this Code section shall apply to all content standards in
201 accordance with a timetable established by the state board; provided, however, that the
202 review of content standards in mathematics shall be completed no later than May 31, 2015,
203 and implemented no later than the beginning of the 2016-2017 school year, and the review
204 of content standards in English language arts shall be completed no later than May 31,
205 2016, and implemented no later than the beginning of the 2017-2018 school year. Nothing
206 in this subsection shall prohibit the state board from accelerating the timetable or

207 conducting the review of two subject areas in the same year or prohibit a local board of
 208 education from implementing the revised mathematics content standards in the 2015-2016
 209 school year."

210 **SECTION 1-4.**

211 Said title is further amended by adding a new Code section to read as follows:

212 "20-2-141.1.

213 (a) Beginning on the effective date of this Code section, the State of Georgia shall retain
 214 sole control over the development and revision of the content standards established
 215 pursuant to Code Section 20-2-140 and no content standards shall be adopted or
 216 implemented except in accordance with the procedures required by Code Section 20-2-141;
 217 provided, however, that such required procedures shall not apply to courses developed and
 218 submitted by local boards of education for approval by the state board. On and after the
 219 effective date of this Code section, the state shall not adopt any federally prescribed content
 220 standards or any national content standards established by a consortium of states or a third
 221 party, including, but not limited to, the Next Generation Science Standards, the National
 222 Curriculum for Social Studies, the National Health Education Standards, or the National
 223 Sexuality Standards.

224 (b) No official of the State of Georgia, whether elected or appointed or representing the
 225 state in any capacity, shall join, on behalf of the state or a state agency, any consortium,
 226 association, or entity or enter into a binding agreement, when such membership or
 227 agreement would relinquish any measure of control over standards and assessments, to any
 228 individual or entity outside the state.

229 (c) The Department of Education shall annually submit to the General Assembly a detailed
 230 report of all grants, including federal, private, or from other sources, that the department
 231 has applied for or received and of all outside funding that the department has received. The
 232 report shall include:

233 (1) Long-term projections of unfunded costs for both state and local governments for at
 234 least a 12 year period;

235 (2) The purpose and effect of the program, including its effect on and interrelationship
 236 with any existing program currently operating within this state;

237 (3) Justification for the program and peer reviewed research, if any, that validates the
 238 effectiveness of the program; and

239 (4) Any negative effects on the constitutional rights of Georgia citizens, including their
 240 right to exercise control over education.

241 (d) All state-wide K-12 tests and assessments shall be controlled by the State of Georgia
 242 without any obligation to other entities, states, consortia, or the federal government and

243 shall not be designed to test national standards or rebranded national standards or be based
 244 on any standards established by a consortium of states or a third party, including but not
 245 limited to the Next Generation Science Standards, the National Curriculum for Social
 246 Studies, the National Health Education Standards, or the National Sexuality Standards.
 247 The state shall not relinquish any binding control over testing as a condition of receiving
 248 a grant. On and after the effective date of this Code section, criterion assessments
 249 developed pursuant to Code Section 20-2-281 shall be aligned with the content standards
 250 revised pursuant to Code Section 20-2-141 for each subject area. Until such new
 251 assessments are developed, the state board shall use elementary, middle, and high school
 252 level criterion assessments which progress toward revised content standards."

253 **SECTION 1-5.**

254 Beginning September 24, 2014, a local school system shall have the flexibility to determine
 255 its curriculum and instruction without constraint, including returning to curriculum and
 256 instruction aligned to the former Georgia Performance Standards that were in effect in June
 257 2010, until the completion of the revision process established pursuant to this part and the
 258 establishment of new standards pursuant to such process. Further, local school systems may
 259 elect to use discrete mathematics and to adopt reading lists, instructional materials, and
 260 support materials. Following the adoption of content standards pursuant to the process
 261 established in Code Section 20-2-141, local school systems may sequence, expand, and
 262 enrich the content standards to the extent deemed necessary and appropriate for its students
 263 and communities.

264 **PART II**

265 **SECTION 2-1.**

266 This part shall be known and may be cited as the "Student Right to Privacy Act."

267 **SECTION 2-2.**

268 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
 269 adding a new article to Chapter 1, relating to general provisions, to read as follows:

270 "ARTICLE 3

271 20-1-30.

272 (a) As used in this article, the term:

- 273 (1) 'Affective computing' means systems and devices that can or attempt to recognize,
274 interpret, process, or simulate aspects of human feelings or emotions.
- 275 (2) 'Biometric data' means a record of one or more measurable biological or behavioral
276 characteristics that can be used for automated recognition of an individual, including
277 fingerprints, retina and iris patterns, voiceprints, DNA sequence (including newborn
278 screening information), and facial characteristics.
- 279 (3) 'Cloud computing service' means a service that enables on-demand network access
280 to a shared pool of configurable computing resources, such as networks, servers, storage,
281 applications, and services, to provide a student, teacher, or school personnel account
282 based productivity applications such as e-mail, document storage, and document editing
283 that can be rapidly provisioned and released with minimal management effort or
284 interaction with a cloud computing service provider. A cloud computing service has the
285 characteristics of on-demand self-service, broad network access, resource pooling, rapid
286 elasticity, and measured service.
- 287 (4) 'Cloud computing service provider' means an entity, other than an education
288 institution, that operates a cloud computing service.
- 289 (5) 'Department' means the Georgia Department of Education.
- 290 (6) 'Education institution' means any public early care and learning program, elementary
291 or secondary school, or governing board of a charter school in this state.
- 292 (7) 'Education program' means a program of instruction administered by a state agency
293 or education institution within this state.
- 294 (8) 'Interpersonal resources' means noncognitive, emotional, and psychological
295 characteristics and attributes and skills used to manage relationships and interactions
296 between or among individuals.
- 297 (9) 'Intrapersonal resources' means noncognitive, emotional, and psychological
298 characteristics and attributes used to manage emotions and attitudes within an individual.
- 299 (10) 'Local school system' means any local board of education, local school system, or
300 governing board of a charter school in this state.
- 301 (11) 'Psychological resources' means noncognitive, emotional characteristics, attributes,
302 and skills, including mindsets, learning strategies, and effortful control, used by an
303 individual to address or manage various life situations.
- 304 (12) 'State agency' means the Georgia Department of Education, the State Board of
305 Education, the Education Coordinating Council, the Office of Student Achievement, the
306 Georgia Department of Early Care and Learning, the Georgia Student Finance
307 Commission, the Georgia Student Finance Authority, the Georgia Professional Standards
308 Commission, any regional educational service agency, or any other state pre-K through

309 grade 12 education related entity, including any education related foundation or nonprofit
 310 entity established by Georgia statute or which derives its authority from Georgia statutes.

311 (13) 'Student data base' means the Georgia Statewide Longitudinal Data System
 312 established pursuant to Code Section 20-2-320, including the GA AWARDS data system,
 313 the K-12 Statewide Longitudinal Data System, or any other system or data warehouse
 314 providing substantially the same function which collects, houses, or maintains data on
 315 Georgia students in pre-kindergarten through postsecondary education, including
 316 regional, interstate, or federal data warehouse organizations under contract to or with a
 317 memorandum of understanding with the Georgia Department of Education, the Office of
 318 Student Achievement, or other state education entity.

319 (14) 'Work force information' means information related to unemployment insurance,
 320 wage records, unemployment insurance benefit claims, or employment and earnings data
 321 from work force data sources, such as state wage records, the Wage Record Interchange
 322 System (WRIS), or the federal Employment Data Exchange System (FEDES).

323 (15) 'Written consent' means signed and dated consent in written form or by electronic
 324 signature given prior to the data collection or disclosure and specifically consenting to
 325 the collection or disclosure of specific data.

326 (b) As used in this article, the terms 'disclosure,' 'education records,' 'eligible student,'
 327 'parent,' 'party,' 'personally identifiable information,' 'record,' and 'student' shall have the
 328 same meaning as those terms are defined in the regulations (34 C.F.R. Part 99.3)
 329 promulgated under the Family Educational Rights and Privacy Act as of January 1, 2014.

330 20-1-31.

331 (a) Unless explicitly required by federal law, no student or family information may be
 332 collected by a state agency, local school system, or education institution without the written
 333 consent of parents, guardians, or eligible students unless the data is directly related to the
 334 educational needs of the student. The following information is not considered directly
 335 related to the educational needs of the student:

336 (1) Kindergarten through grade 12 student biometric data, except as may be necessary
 337 to facilitate the instruction of special needs students or students participating in school
 338 physical education and athletic programs;

339 (2) Any data collected via affective computing, including analysis of facial expressions,
 340 EEG brain wave patterns, skin conductance, galvanic skin response, heart-rate variability,
 341 pulse, blood volume, posture, and eye-tracking;

342 (3) Student or family religious affiliation or beliefs;

343 (4) Student or family political affiliation or beliefs;

344 (5) Student or family member sexual orientation or beliefs about sexual orientation;

- 345 (6) Student or family gun ownership;
- 346 (7) Kindergarten through grade 12 student or family income data, except information
347 necessary to determine eligibility for, to facilitate participation in, or to receive financial
348 assistance under a scholarship, free-or-reduced-lunch, or other financial-assistance
349 program; or
- 350 (8) Kindergarten through grade 12 student or family social security numbers, except as
351 otherwise authorized by law.
- 352 (b) Unless explicitly required by federal law, a local school system shall not allow the
353 following information regarding its students to be entered into any state-wide student
354 longitudinal data base without the written consent of parents, guardians, or eligible
355 students:
- 356 (1) Medical, health, and mental health records, except immunization records required by
357 state law, records needed or created by a school based health program for administering
358 prescription drugs or otherwise treating a student at school, records needed or created by
359 a school based counselor when a student seeks counseling while at school, or fitness
360 assessments conducted pursuant to Code Section 20-2-777;
- 361 (2) Student or family workforce information, except information related to work based
362 learning, technical, or industry-certificate programs participated in for academic credit
363 or as used for an audit, evaluation, or compliance activity in connection with a
364 state-supported education program provided that parents and eligible students may opt
365 out from any personally identifiable data being disclosed for the purposes of such audits,
366 evaluations, or compliance activities;
- 367 (3) Any psychological data (including any resulting from classroom, education
368 institution, local school system, state, or national assessments) that measure
369 psychological resources, attributes, dispositions, social skills, attitudes, or interpersonal
370 or intrapersonal resources; provided, however, that this shall not include special
371 education assessments; or
- 372 (4) Any data developed through predictive modeling, except information necessary for
373 dropout-prevention programs and as necessary for evaluation of education programs
374 relating to student proficiencies as measured in pre-K through grade 12 education or to
375 predict student success in higher education.
- 376 (c) No funds, whether from federal or private grants or other sources, shall be used on
377 construction, enhancement, or expansion of any student data base that does not comply
378 with the provisions of this Code section, that is designed to collect and store student data
379 that tracks students beyond their kindergarten through grade 12 or postsecondary education
380 or compile their personal, nonacademic information beyond what is necessary for either
381 administrative functions directly related to the student's education or evaluation of

382 academic programs and student progress, or that is used for an audit, evaluation, or
383 compliance activity in connection with federal or state supported education programs.

384 (d) No state agency, local school system, or education institution shall pursue or accept
385 any grant, whether from the federal government or any private entity, that would require
386 the collection or reporting of any types of student data in violation of subsection (a) or (b)
387 of this Code section.

388 (e)(1) No later than August 1, 2014, state agencies, local school systems, and education
389 institutions shall publicly and conspicuously disclose on their websites the type of
390 personally identifiable information from education records maintained by such state
391 agencies, local school systems, or education institutions, directly or through contracts
392 with outside parties, and the types of education records that are transferred to cloud
393 computing service providers. This disclosure shall be updated within 30 days of any
394 change. Local school systems and education institutions shall annually notify parents and
395 eligible students of such website posting which may be accomplished through prominent
396 posting on the website and notice through local media. Such posting shall also include
397 a telephone number or e-mail address that parents may access to ask questions. State
398 agencies shall also provide annual electronic notification of this information to the
399 chairpersons of the Senate Education and Youth Committee and House Committee on
400 Education. Such disclosure and electronic notifications shall include information for
401 parents or eligible students regarding the process to request a copy of the education
402 record pertaining to that student contained in the student data base, the required response
403 time, and the process to contest its content pursuant to paragraph (2) of this subsection.

404 (2) Within 30 days of a request to a local school system, parents and eligible students
405 shall be provided a printed copy of the student's education records that are in a student
406 data base and shall have the right to correct the records in such data base in a manner that
407 is consistent with requirements of state and federal law.

408 20-1-32.

409 (a) Except as otherwise authorized by this Code section, access to education records in the
410 student data base shall be restricted to the authorized representatives of the state agency,
411 local school system, or education institution who require such access to perform their
412 assigned duties. No individual shall be designated an authorized representative for such
413 purposes unless he or she is employed by or under contract with the designating state
414 agency, local school system, or education institution.

415 (b)(1) Personally identifiable information from an education record shall not be disclosed
416 to a party conducting research or studies for or on behalf of such state agencies or

417 education institutions unless the parent, guardian, or eligible student has had reasonable
418 notice of the right to opt out.

419 (2) Any outside party conducting research or a study as described in paragraph (1) of this
420 subsection shall comply with the requirements of subsection (d) of this Code section in
421 order to receive any records.

422 (3) Each state agency and education institution shall develop and publish criteria for the
423 approval of research related data requests from state and local government agencies, the
424 General Assembly, academic researchers, and the public.

425 (c) Before conducting any audit or evaluation of an education program or conducting any
426 compliance or enforcement activity in connection with legal requirements that relate to
427 state or local school system supported programs, the state agency, local school system, or
428 education institution shall specify the federal or state legal authority for the audit,
429 evaluation, or compliance or enforcement activity. In conducting any audit or evaluation
430 of an education program or conducting any compliance or enforcement activity in
431 connection with legal requirements that relate to state or local school system supported
432 education programs, when such audit, evaluation, or activity involves access to personally
433 identifiable student information, education records may be released only to authorized
434 representatives of the government auditor or evaluator or the outside auditing agency or
435 firm. No party may be designated an authorized representative of such government auditor
436 or evaluator or the outside auditing agency or firm unless that individual is a staff member
437 of the government auditor or evaluator or outside auditing agency or firm. No outside
438 auditing agency or firm shall conduct any audit or evaluation that involves access to
439 personally identifiable student information unless it certifies in writing that it will comply
440 with the terms and conditions set forth in subsection (d) of this Code section. Results of
441 such audit or evaluation shall be posted on the website of the state agency, local school
442 system, or education institution administering the education program that is the subject of
443 the audit or evaluation.

444 (d) State agencies, local school systems, and education institutions shall not disclose
445 personally identifiable information from education records without the written consent of
446 parents or eligible students to a contractor, consultant, or other party to whom the state
447 agency, local school system, or education institution has outsourced services or functions
448 unless that outside party:

449 (1) Performs a service or function which would otherwise be performed for the state
450 agency, local school system, or education institution by its employees, provides cloud
451 computing services, or is an authorized representative who conducts studies for, or on
452 behalf of, the state agency, local school system, or education institution to develop,
453 validate, or administer predictive tests as necessary for predicting student proficiency as

454 measured in pre-K through grade 12 education, to predict success in higher education, to
455 administer student aid programs, or to improve instruction;
456 (2) Limits internal access to education records to those individuals who require access
457 to those records for completion of the contract;
458 (3) Does not use the education records for any purposes other than those explicitly
459 authorized in the contract;
460 (4) Does not disclose any personally identifiable information from education records to
461 any other party unless required by statute or court order and the party provides a notice
462 of the disclosure to the state agency, local school system, or education institution that
463 provided the information no later than the time the information is disclosed, unless
464 providing notice of the disclosure is expressly prohibited by the statute or court order;
465 (5) Maintains reasonable administrative, technical, and physical safeguards to protect the
466 security, confidentiality, and integrity of the personally identifiable student in its custody;
467 (6) Uses encryption technologies to protect data while being transmitted or in its custody
468 from unauthorized disclosure using a technology or methodology specified by the
469 Secretary of the United States Department of Health and Human Services in guidance
470 issued under Section 13402(h)(2) of Public Law 111-5;
471 (7) Conducts a security audit at least annually but more often for contracts of short
472 duration and provides the results of that audit to each state agency, local school system,
473 or education institution that provides education records;
474 (8) Provides the state agency, local school system, or education institution with a breach
475 remediation plan acceptable to the state agency, local school system, or education
476 institution before initial receipt of education records;
477 (9) Reports all suspected or actual security breaches to the state agency, local school
478 system, or education institution that provided education records and to parents of affected
479 students and to eligible students as soon as possible but not later than 48 hours after a
480 suspected or actual breach was known or would have been known by exercising
481 reasonable diligence;
482 (10) Is under the direction of the state agency, local school system, or education
483 institution pursuant to a contract with respect to the use and maintenance of education
484 records;
485 (11) Pays all costs and liabilities incurred by the state agency, local school system, or
486 education institution related to any security breach or unauthorized disclosure, including
487 but not limited to the costs of responding to inquiries about the security breach or
488 unauthorized disclosure, of notifying subjects of personally identifiable information about
489 the breach, of mitigating the effects of the breach for the subjects of the personally

490 identifiable information, and of investigating the cause or consequences of the security
491 breach or unauthorized disclosure; and

492 (12) Destroys or returns to the state agency, local school system, or education institution
493 all personally identifiable information in its custody upon request and at the termination
494 of the contract. Destruction of documents and data shall be performed in compliance
495 with the National Institute of Standards and Technology Special Publication 800-88,
496 Guidelines for Media Sanitation.

497 (e) All contracts entered into with a contractor, consultant, or other party which are subject
498 to subsection (d) or (i) of this Code section shall be posted on the website of the state
499 agency, local school system, or education institution.

500 (f)(1) Information from education records, whether consisting of personally identifiable
501 information or not, shall not be sold to any party for any reason or disclosed to any party
502 for a commercial use, including but not limited to marketing products or services;
503 compilation of lists for sale or rental; development of products or services; creation of
504 individual, household, or group profiles; employment suitability checks; background
505 checks; or insurance rate determinations.

506 (2) A state agency, local school system, or education institution that contracts with a
507 cloud computing service provider shall enter into an agreement with such provider that
508 includes the following terms:

509 (A) The types of data to be transferred or collected, including whether data will be
510 collected directly from students and whether the provider will track students' use of the
511 services;

512 (B) Prohibition on the provider's redisclosure of information from education records,
513 or use of such information for any secondary purposes that benefit the provider or any
514 third party, including but not limited to online behavioral advertising, creating or
515 correcting an individual or household profile primarily for the provider's benefit, the
516 sale of the data for any commercial purpose, or any other similar commercial for-profit
517 activity; provided, however, that a cloud computing service provider may process or
518 monitor student data solely to provide such service to the state agency, local school
519 system, or education institution, and to maintain the integrity of such service;

520 (C) A requirement that all access over the Internet to education records and student
521 data shall be through a secure encrypted protocol, such as, but not limited to, Hypertext
522 Transfer Protocol Secure; and

523 (D) A requirement that all servers that house education records and student data be
524 either solely dedicated to such education records and student data or be provisioned in
525 such a manner that no entity other than the applicable state agency, local school system,
526 or education institution could obtain access to such records and data.

527 (3) Any cloud computing service provider that enters into an agreement pursuant to
528 paragraph (2) of this subsection shall certify in writing to the state agency, local school
529 system, or education institution that it will comply with the terms and conditions set forth
530 in subsection (d) of this Code section and that the state agency, local school system, or
531 education institution maintains ownership of all student data.

532 (4) Any student data stored by a cloud computing service provider shall be stored within
533 the boundaries of the United States.

534 (g) Personally identifiable information from education records shall not be disclosed to any
535 noneducation related government agency, including but not limited to the Georgia
536 Department of Labor, whether within or outside the state, or to any party that intends to use
537 or disclose the information or data for the purpose of workforce-development or economic
538 planning unless used for an audit, evaluation, or compliance activity in connection with
539 federal or state supported education programs; provided, however, that this shall not apply
540 to disclosure of records relating to children in the care or custody of a state agency, whether
541 within or outside the state, including children in foster care and youth in the custody of the
542 Department of Juvenile Justice.

543 (h)(1) Subject to the provisions of subsections (b), (c), (d), and (f) of this Code section,
544 and except when a student is classified as a migrant for federal reporting purposes,
545 personally identifiable information from education records shall not be disclosed to any
546 government agency or other entity outside the state without the written consent of the
547 parent or eligible student.

548 (2) If the United States Department of Education demands, as a condition of making a
549 federal education grant, personally identifiable information, without the written consent
550 of the parent or eligible student, the grant recipient shall provide written notification to
551 those parents and eligible students of the following:

552 (A) That the grant recipient has been required to disclose the student's information to
553 the United States Department of Education;

554 (B) That neither the grant recipient nor any other entity within the State of Georgia will
555 have control over use or further disclosure of that information or data; and

556 (C) The contact information, including the name, telephone number, and e-mail
557 address of the United States Department of Education official who demands the
558 disclosure.

559 (i)(1) Student data shared with any testing contractor by state agencies, local school
560 systems, or education institutions shall be limited to the following:

561 (A) Student identifier number, name, grade level, and other information directly related
562 to test performance, such as previous test scores, provided that no biometric data and

563 no psychological data of any kind is part of that information unless required pursuant
564 to the federal Individual with Disabilities Education Act; and
565 (B) Student demographic information only as necessary for producing annual
566 accountability reports under the Elementary and Secondary Education Act (ESEA),
567 Public Law 107-110; and

568 (C) Aggregate data with no identifiable student information.

569 (2) Demographic data collected under subparagraph (B) of paragraph (1) of this Code
570 section may be collected at the time of test administration, after department approval of
571 the data-collection form, or may be transferred to the testing contractor directly from the
572 state data base. Only fields directly required for producing ESEA accountability reports
573 may be transferred.

574 (3) The testing contractor shall acknowledge in writing that ownership of the student data
575 remains with the state agency, local school system, or education institution that contracts
576 for the testing contractor's services, and the testing contractor shall not disclose the data
577 to any other entity without written permission of that state agency, local school system,
578 or education institution.

579 (4) No state agency, local school system, or education institution shall permit a testing
580 contractor to share any student data with any noneducation entities, or with any education
581 entities not under contract with the state agency, local school system, or education
582 institution.

583 (5) The testing contractor may disclose to the United States Department of Education
584 aggregate reports required under ESEA after receiving written authorization from the
585 department.

586

587 20-1-33.

588 (a) Each violation of any provision of Code Section 20-1-32 by a contractor, consultant,
589 or other party that has entered into a contract with a state agency, local school system, or
590 education institution and is subject to the provisions of this article shall, for a first violation,
591 be punishable by a civil penalty of up to \$5,000.00; a second violation shall be punishable
592 by a civil penalty of up to \$10,000.00 and may result in permanent disqualification by the
593 state agency, local school system, or education institution from access to education records;
594 and a third and any subsequent violation shall be punishable by a civil penalty of up to
595 \$20,000.00 and shall result in permanent disqualification by the state agency, local school
596 system, or education institution from access to education records. For a third and any
597 subsequent violation, each violation involving a different individual education record or
598 a different individual student shall be considered a separate violation for purposes of civil
599 penalties under this subsection.

600 (b) The Attorney General shall have the authority to enforce compliance with this article
601 by investigation and subsequent commencement of a civil action, to seek civil penalties for
602 violations of this article, and to seek appropriate injunctive relief, including but not limited
603 to a prohibition on obtaining personally identifiable information for an appropriate time
604 period. In carrying out such investigation and in maintaining such civil action, the
605 Attorney General is authorized to subpoena witnesses, compel their attendance, examine
606 them under oath, and require that any books, records, documents, papers, or electronic
607 records relevant to the inquiry be turned over for inspection, examination, or audit, in
608 accordance with Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'
609 (c) Nothing contained in this Code section shall be construed as creating a private right of
610 action against a state agency, a local board of education, an education institution, or an
611 employee of any such agency, board, or institution."

612 **PART III**

613 **SECTION 3-1.**

614 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
615 law without such approval.

616 (b) Part II of this Act shall apply to school years beginning with the 2014-2015 academic
617 year.

618 **SECTION 3-2.**

619 All laws and parts of laws in conflict with this Act are repealed.