



March 4, 2024

Representative David Bedey
Chairman, Education Interim Budget Committee
State Capitol Building
PO Box 200400
Helena, MT 59620-0400

Dear Chairman Bedey,

You asked that MTSBA provide your committee with our interpretation of what Montana law authorizes and/or requires of the statewide K-12 data system with regard to collection and sharing of student-level data, in compliance with the federal Family Education Rights and Privacy Act (FERPA). You further requested that we address any changes in such authorization and/or requirement as a result of the passage of House Bill 949 in the 2023 Legislature.

We have previously reviewed an opinion on this subject prepared by Legislative Services Attorney Laura Sankey-Keip and we agree with her interpretation of the law. We have also reviewed the interpretations of the Office of Public Instruction (OPI). OPI initially indicated that it lacked the authority to collect and share student level data, then later acknowledged in a meeting before your Committee on December 15, 2023 that, though it has the right to collect and share student level data, it is not obligated to do so. OPI's interpretation of the law is incorrect.

Short Answer

The law as amended by House Bill 949 both authorizes and requires that OPI collect and facilitate matching of student-level K-12 data with higher education and workforce data. A plain reading of the language of the bill supports this conclusion.

Details and Statutory Analysis

House Bill 949 includes an expression of the Legislature's intent in passing the bill.

“The purpose of [sections 1 through 3] is to create a strong and transparent education and workforce data governing board with authority over the linkage of education and workforce data gathered and maintained by state agencies to ensure that the data is used to benefit the people of the state in a secure manner and only for appropriate purposes.”

The contents of House Bill 949 include several reinforcing provisions aligned with the stated purpose of the bill in section 1.

First, House Bill 949 amended Section 20-7-104 to specifically requires that OPI's statewide K-12 data system must include matching of student-level K-12 data:

20-7-104. Transparency and public availability of public school performance data -- reporting -- availability for timely use to improve instruction. (1) The **office of public instruction shall** establish, maintain, and continually improve **a statewide K-12**

data system that, at a minimum:

.....

(c) facilitates matching of **student-level K-12 data** with higher education and workforce data

The language above, using “shall” and newly added to the law by House Bill 949, imposes a mandatory duty on OPI to ensure its statewide K-12 data system facilitates matching of student-level K-12 data.

Further reinforcing both the purpose of House Bill 949 and this new requirement for OPI’s statewide K-12 data system are two root definitions repeatedly used throughout the bill that require the collection and use of student-level data consistent with the protections afforded by FERPA. Section 20-7-137 specifically references that “education data” means data collected or reported “at the student level.”

20-7-137. Definitions. As used in this part, the following definitions apply:

(3) "Education data" means data collected or reported **at the student level** that is included in a student's educational record, including but not limited to

This same section defines the term “workforce data” in the context of individual level data as well (“(4) "Workforce data" means data related to **an individual's** workforce outcomes, including but not limited to, **an individual's**”).

House Bill 949 then consistently refers to these two defined terms, connected by a conjunction, i.e., “education and workforce data” twenty-two separate times in the bill. To add further clarification, House Bill 949 also added a new (7) to Section 20-7-104, clarifying “the superintendent of public instruction **may not share or restrict** the sharing of student educational records **beyond what is allowed or restricted** under the Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99." FERPA specifically authorizes shared data arrangements and has published guidance regarding how states can participate in such arrangements in compliance with FERPA.

OPI argues that the use of a conjunction “and” to tie the defined terms of “education data” and “workforce data” means that “education and workforce data” is not equivalent in meaning to “education data” and “workforce data” and that these definitions in the bill mean nothing as a result. This argument is without merit, and would, if correct, render definitions adopted by the Legislature in House Bill 949 and even the purpose of House Bill 949 itself void. In fact, the terms “workforce data” and education data” are not used separately anywhere in the bill and only appear within the combined reference to both defined terms, “education and workforce data.” Failing to interpret “education and workforce data” as including both “education data” and “workforce data” would violate several basic principles of statutory construction codified in Montana law by the Montana Legislature.¹

¹ See. e.g.

- 1-3-219. Form and substance. The law respects form less than substance;
- 1-3-223. Idle acts. The law neither does nor requires idle acts;
- 1-3-232. Avoiding voidness. An interpretation which gives effect is preferred to one which makes void.

Finally, House Bill 949 creates the education and workforce data governing board, which is specifically empowered to identify “the specific types of educational and workforce data that *must* be shared by the contributing agencies.” Thus, the power to require collection and sharing of education data is also within the power of the board.

In conclusion, the law as amended by House Bill 949 both authorizes and requires that OPI collect and facilitate matching of student-level K-12 data with higher education and workforce data. The purpose of the act, its plain meaning and the legislative intent documented through its passage all support this interpretation.

Sincerely,

Lance Melton
Executive Director
Montana School Boards Association

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- 1-3-233. Reasonableness. Interpretation must be reasonable.
 - 1-2-105. General definitional rules -- verb tense, gender, and number. The following rules apply in this code: (3) The singular includes the plural and the plural the singular.
 - 1-2-107. Applicability of definitions. Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.