SB 3092: Proposed Amendment Bill Analysis

The proposed amendment to SB 3092 outlines, in 4(A-D), a set of standards that must be met in order for a school, school district, school board or the State Board of Education to share private student data with another entity. Section 4(E) of the amendment also requires deletion of data if certain conditions are met. Finally, if the standards contained in 4(A) are not met, under 4.2, parental notification must occur and parents the have the option to opt out of their student's data being released. The provisions originally contained in HB 4558 regarding the sharing and use of data for research purposes are also contained in this amendment in Section 4.5.

Concerns:

The overall concern is that there are a number of open questions about the standards contained in this amendment, what the response will be from technology companies, the time it will take to implement, and whether this language adequately strikes the balance between protecting privacy without stifling the necessary use of technology.

Regarding the standards contained in the amendment, Illinois should consult with the Data Quality Campaign and the USDOE Privacy Technical Assistance Center for advice and then review that advice with a wide group of stakeholders to be sure we are not putting the wrong standards into law.

It would be prudent to take the time to review how these standards compare to the agreements districts are executing today. We need to consider whether this bill would shut down critical services until companies can catch up. For example, if an assessment provider does not meet this standard today, it would take time to comply even if it is willing to do so. We need to consider whether we offer flexibility or require immediate compliance and what the ramifications are of each option.

Rather than setting into law standards that have not been reviewed thoroughly with the help of stakeholders, the federal government, other states and law makers and then requiring an opt out if these standards are not met, this issue should be carefully reviewed to ensure the standards are the right ones, are flexible enough to accommodate changes in the field, are strict enough to ensure data is being used in the right way and that we consider the appropriate resolution if standards are not met.

Specific Language Concerns:

1. The amendment now contains two different standards – one contained in Section 4 and one contained in Section 4.5. Because Section 4 could also apply to data sharing for purposes of research, this creates confusion as to which standard would be applicable if a school district or ISBE share data for the purposes of research. If the result of the legislation is that researchers must comply with both set of standards, then we are making data sharing for research purposes potentially more burdensome than all other data sharing.

2. Mentioning specific publications in Section 4(D) (rather than just invoking PTAC standards generally as in Section 4.5) is of concern because these publications will undoubtedly become obsolete at some point, and the law will then have to be changed. What if there is not a successor document? What if a major vulnerability is discovered that needs to be immediately remedied but the fix does not fall under these protocols? It is very limiting to name specific publications instead of an organization/office because then the statute will need to be repeatedly amended.

3. Section 4(E)(ii) needs to be clarified with regard to "direct control" – we cannot have parents being able to request deletion of information that is not within our possession/direct control but is rather within the direct control of a vendor over whom we have direct control, as set out in FERPA. One likely result is that some researchers will choose not to work with us. If they get half way through writing a report and then a parent requests that their student's information be deleted from the dataset, they would have to go re-run the analysis.

   School districts refer to records not only while the student is in school, but often after they have moved on. There are also provisions in State law for maintenance of certain record. This raises concerns that the amendment may be in conflict with current requirements in the Student Records Act.

4. 4.1 raises concerns as ISBE may want to work with a researcher to help accomplish a task that is necessary to fulfill a statutory obligation (e.g., computing BFR metrics), but the sharing with the researcher is not specifically required by statute.

5. We remain concerned with any opt out, particularly if we are unsure if we could get all vendors/contractors to comply with the proposed standards. We cannot allow our ability to do our work and serve students to be undermined by incomplete data sets and biased results that we will see if there is the opportunity for opting out. It would be best to solve the concerns of data sharing on the front end then to allow an opt out on the back end.

   This opt out provision assumes that districts are using information for nefarious purposes and are not upholding their responsibility to safely maintain and transmit student data. We are unaware of an incident in which an Illinois student has been harmed by the use of their record in a research study. We believe the provision will negatively impact the validity of the study and its use for understanding the value of student-centered programs and appropriations.

6. This amendment is a new unfunded mandate requiring the post-secondary education institution or the organization conducting research to designate an individual to act as custodian of the personally identifiable information and restrict access. In addition the financial burden and additional mandates will limit the potential for organizations to participate who may not have the resources and capacity to hire and maintain separate facilities as required.

7. The amendment creates a disincentive for school districts and outside entities from collaborating on research to gauge the efficacy of early childhood programs and other

community programs. The language requires districts to adopt a specific data encryption process for the storage and transmission of information. This places a potentially significant burden on districts and may limit research partners in their ability to upload and analyze the data. We believe that it is critical to ensure that student data is protected and we are willing to consider new safeguards; however, we must be mindful of the impact of overly burdensome mandates on the ability of district partners to analyze the value of programs and investments.