

APPROVED
DECEMBER 12, 2017

Item #IV-12
December 12, 2017

**PROPOSED RULES:
DATA REPOSITORY, SHARED DATA AGREEMENTS, AND FEES**

Submitted for: Action.

Summary: This item requests approval of the proposed rules for the Data Repository, Shared Data Agreements, and Fees. Public Act 100-417 amended the Board of Higher Education Act and the Illinois Public Community College Act to provide that the boards may collect fees to cover the costs of processing and handling individual student-level data requests pursuant to an approved data sharing agreement. The Act requires fees to be set by administrative rules.

The Illinois Administrative Procedures Act specifies a three-step process for the proposal and adoption of administrative rules: (1) initial Board approval; (2) a publication and public notice period including a period for review by the staff and members of the Joint Committee on Administrative Rules; and (3) final adoption by the Board.

Action Requested: That the Illinois Board of Higher Education approves the proposed rules for Data Repository, Shared Data Agreements, and Fees (23 Ill. Admin. Code 910) for publication in the *Illinois Register*.

STATE OF ILLINOIS
BOARD OF HIGHER EDUCATION

**PROPOSED RULES:
DATA REPOSITORY, SHARED DATA AGREEMENTS, AND FEES**

This item requests approval of the proposed rules by the Illinois Board of Higher Education (IBHE). Public Act 100-417 amended the Board of Higher Education Act and the Illinois Public Community College Act to provide that the boards may collect fees to cover the costs of processing and handling individual student-level data requests pursuant to an approved data sharing agreement. The Act requires fees to be set by administrative rules. The proposed rules are similar to the rules drafted by the Illinois Community College Board which may be considered for approval during their December 1, 2017, Board meeting.

Pursuant to the P-20 Longitudinal Education Data System Act, the IBHE is the State Education Authority responsible for collecting and maintaining enrollment, completion, and student characteristic information of those attending higher education institutions other than community colleges. Student-level data is private, confidential, and protected by State and federal laws. IBHE's Division of Information Management and Research uses the appropriate policies and practices to maintain confidentiality while collecting and securing the data. Agreements to share data are carefully scrutinized and reviewed by the Board's legal counsel.

Once approved by the Illinois Board of Higher Education, the proposed rules will be submitted to the Secretary of State for publication in the *Illinois Register*. The Illinois Administrative Procedures Act specifies a three-step process for the proposal and adoption of administrative rules: (1) initial Board approval; (2) a publication and public notice period including a period for review by the staff and members of the legislative Joint Committee on Administrative Rules; and (3) final adoption by the Board. Final presentation is anticipated at the March 2018 Board meeting.

Staff Recommendation

Staff recommends the adoption of the following resolution:

The Illinois Board of Higher Education hereby approves the proposed rules for the Data Repository, Shared Data Agreements, and Fees (23 Ill. Adm. Code 910) as detailed in the attached document for publication in the Illinois Register.

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER II: BOARD OF HIGHER EDUCATION

PART 910
DATA REPOSITORY, SHARED DATA AGREEMENTS, AND FEES

Section	
910.10	Purpose
910.20	Definitions
910.30	Data Repository
910.40	Use, Security and Confidentiality of Data
910.50	Shared Data Agreements
910.60	Schedule of Fees

AUTHORITY: Implementing and authorized by Section 9.36 of the Board of Higher Education Act [110 ILCS 205/9.36].

SOURCE: Adopted at 41 Ill. Reg. _____, effective _____.

Section 910.10 Purpose

The Board may collect a fee to cover the cost of processing and handling individual student-level data requests pursuant to an approved data sharing agreement. The fee shall not be assessed on any entities that are complying with State or federal-mandated reporting. The fee shall be set by the Board by rule. (Section 9.36 of Act)

The Board may not provide personally identifiable information on individual students except in the case where an approved data sharing agreement is signed that includes specific requirements for safeguarding the privacy and security of any personally identifiable information in compliance with the federal Family Educational Rights and Privacy Act of 1974. (Section 9.36 of Act)

Section 910.20 Definitions

“Act” means the Board of Higher Education Act [110 ILCS 205].

“Board” or “IBHE” means the Board of Higher Education.

“Shared Data Agreement” means a written contract between parties that defines the care and handling of sensitive or restricted use data, including, but not limited to, the terms of the agreement, a description of the data requested, ownership of the data, security measures and access to the data including access by third parties or subcontractors of the parties, uses of the data, data confidentiality procedures, duration of the agreement including any renewals thereof, and disposition of the data at the completion of the contract.

“Student-Level Data” means demographic, performance, and other data that pertains to a single student.

Section 910.30 Data Repository

Under the authority of the P-20 Longitudinal Education Data System Act, the Board is the State Education Authority responsible *for collecting and maintaining authoritative enrollment, completion, and student characteristic information on students enrolled in institutions of higher learning, other than community colleges.* [105 ILCS 13/15]

Section 910.40 Use, Security and Confidentiality of Data

- a) The IBHE and entities accessing IBHE data shall comply with all applicable federal and State laws which regulate the privacy and use of, and access to, shared data. (See, e.g., the Family Educational Rights and Privacy Act (20 USC 1232g); the Illinois School Student Records Act (105 ILCS 10/1, et seq.); the Data Processing Confidentiality Act (30 ILCS 585/0.01 et seq.); the Freedom of Information Act (5 ILCS 140); Section 487 of the Higher Education Act of 1965, as amended (20 USC 1094))
- b) IBHE data is confidential and shall not be used or shared for any purpose other than that which is directly related to internal operations of IBHE or that which is stipulated in an IBHE shared data agreement with another entity. Entities accessing IBHE data shall be responsible for meeting IBHE shared data agreement security procedures and protocols, pursuant to Section 910.50, to protect the integrity of the data accessed, stored, transmitted or received.

Section 910.50 Shared Data Agreements

- a) Student-level data furnished by the IBHE is licensed by the IBHE and remains the property of the IBHE.
- b) All requests for data files, data products, aggregations or reports containing student-level data elements, except in the case of state and federal mandated accountability reporting, shall be made in writing to the Board using Board forms.
- c) All requests shall be approved in writing by the Executive Director, or his/her designee prior to execution of a shared data agreement.
- d) All data obtained from the Board shall be used solely for the purpose identified by the requesting entity. The scope and term of this usage will be detailed in a shared data agreement specific to each request. Use of the data for any other purpose shall require a separate and specific written request, approval, and shared data agreement.
- e) IBHE will provide the data “as is” with no warranties of any kind concerning fitness for any particular use. IBHE shall not be liable in any manner whatsoever for the requesting party’s use of the data or any inferences, judgments, or decisions resulting from the use of the data. The data is provided “as is,” and the requesting party is solely responsible for understanding the limitations of the data, including but not limited to its accuracy, as well as its suitability for any

particular use. IBHE makes no representations of any kind and assumes no responsibility for the requesting party's use of the data.

- f) Any entity in receipt of IBHE student-level data must comply with applicable laws and regulations with respect to the protection of privacy, security and dissemination of the confidential information. Upon completion of the data sharing purpose, the entity in receipt of IBHE student-level data will return it to IBHE or destroy it and any copies as specified in the data sharing agreement.
- g) The requesting party shall defend, indemnify, release, and hold IBHE, its board members, employees and agents harmless from and against any and all claims, losses, and expenses, including any and all consequential, special, exemplary or punitive damages arising out of or incidental to the data sharing agreement regardless of the negligence or fault of the requesting party.

Section 910.60 Schedule of Fees

Fees are assessed for providing access to data files or producing studies, data products or analyses of data. A schedule of fees for datasets and products is set forth below.

- a) Schedule of Fees

<u>Number of Records Processed</u>	<u>Fee</u>
Up to 24,000	\$2,000
24,001 to 80,000	\$4,000
80,001 to 300,000	\$8,000
300,001 to 1,000,000	\$15,000

- b) In addition to standard data product fees, the Board will assess a 30 percent surcharge for complex requests related to longitudinal analysis and generation of outcomes measures.

