



House of Representatives

General Assembly

File No. 527

February Session, 2016

Substitute House Bill No. 5469

House of Representatives, April 7, 2016

The Committee on Education reported through REP. FLEISCHMANN of the 18th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING STUDENT DATA PRIVACY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016, and applicable to contracts*
2 *entered into, amended or renewed on or after said date*) (a) For the purposes
3 of this section:

4 (1) "Contractor" means an individual, business or other entity that
5 provides educational software or services for the electronic storage,
6 management or retrieval of student records and receives such student
7 records pursuant to a written contract with a local or regional board of
8 education, the State Board of Education or the Department of
9 Education;

10 (2) "De-identified student information" means any information that
11 cannot be used to identify an individual student;

12 (3) "Student-generated content" means any student materials

13 created by a student including, but not limited to, essays, research
14 papers, portfolios, creative writing, music or other audio files or
15 photographs, except "student-generated content" does not include
16 student responses to a standardized assessment; and

17 (4) "Student record" means any information directly related to a
18 student that is maintained by a local or regional board of education,
19 the State Board of Education or the Department of Education and any
20 information acquired from a student through the use of educational
21 software assigned to the student by a teacher or employee of a local or
22 regional board of education, the State Board of Education or the
23 Department of Education, except "student record" does not include de-
24 identified student information allowed under the contract to be used
25 by the contractor to (A) improve educational products for adaptive
26 learning purposes and customize student learning, (B) demonstrate the
27 effectiveness of the contractor's products in the marketing of such
28 products, and (C) develop and improve the contractor's products and
29 services.

30 (b) On and after October 1, 2016, every contract that a local or
31 regional board of education, the State Board of Education or the
32 Department of Education enters into with a contractor shall include,
33 but need not be limited to, the following:

34 (1) A statement that student records and student-generated content
35 are not the property of or under the control of a contractor;

36 (2) A description of the means by which a student, parent or legal
37 guardian of a student may retain possession and control of student-
38 generated content and, if applicable, the means by which a student,
39 parent or legal guardian of a student may transfer such student-
40 generated content to an electronic mail account;

41 (3) A statement that the contractor shall not use student records for
42 any purposes other than those authorized pursuant to the contract;

43 (4) A description of the procedures by which a student, parent or

44 legal guardian of a student may review personally identifiable
45 information contained in the student record and correct erroneous
46 information, if any, in such student record;

47 (5) A description of the actions the contractor shall take to ensure
48 the security and confidentiality of student records;

49 (6) A description of the procedures for notifying a student, parent or
50 legal guardian of a student and the local or regional board of
51 education, the State Board of Education or the Department of
52 Education as soon as practical, but not later than forty-eight hours after
53 the contractor becomes aware of or suspects that any student record
54 under the control of the contractor has been subject to unauthorized
55 access or suspected unauthorized access;

56 (7) A statement that student records shall not be retained or
57 available to the contractor upon completion of the contracted services
58 unless a student, parent or legal guardian of a student chooses to
59 establish or maintain an electronic account with the contractor for the
60 purpose of storing student-generated content;

61 (8) A statement that the contractor and the local or regional board of
62 education, the State Board of Education or the Department of
63 Education shall ensure compliance with the Family Educational Rights
64 and Privacy Act of 1974, 20 USC 1232g;

65 (9) A statement that the laws of the state of Connecticut shall govern
66 the rights and duties of the contractor and the local or regional board
67 of education, the State Board of Education or the Department of
68 Education; and

69 (10) A statement that if any provision of the contract or the
70 application of the contract is held invalid by a court of competent
71 jurisdiction, the invalidity does not affect other provisions or
72 applications of the contract which can be given effect without the
73 invalid provision or application.

74 (c) A contractor shall not use (1) student records for any purposes

75 other than those authorized pursuant to the contract, or (2) personally
76 identifiable information contained in student records to engage in
77 advertising.

78 (d) Any provision of a contract entered into between a contractor
79 and a local or regional board of education, the State Board of
80 Education or the Department of Education on or after October 1, 2016,
81 that conflicts with any provision of this section shall be void.

82 (e) Any contract entered into on and after October 1, 2016, that does
83 not include a provision required by subsection (b) of this section shall
84 be void, provided the local or regional board of education, the State
85 Board of Education or the Department of Education has given
86 reasonable notice to the contractor and the contractor has failed within
87 a reasonable time to amend the contract to include the provision
88 required by subsection (b) of this section.

89 (f) Not later than five business days after executing a contract
90 pursuant to this section, a local or regional board of education shall
91 provide notice to any student and the parent or legal guardian of a
92 student affected by the contract. The notice shall (1) state that the
93 contract has been executed and the date that such contract was
94 executed, (2) provide a brief description of the contract and the
95 purpose of the contract, (3) state what student-generated content or
96 student records may be collected as a result of the contract, and (4)
97 state that the parent or legal guardian of a student affected by the
98 contract may choose to not have such student participate in the
99 execution of the contract.

100 Sec. 2. (NEW) (*Effective October 1, 2016*) (a) For the purposes of this
101 section:

102 (1) "Operator" means any person who (A) operates an Internet web
103 site, online service or mobile application with actual knowledge that
104 such Internet web site, online service or mobile application is used for
105 school purposes and was designed and marketed for school purposes,
106 and (B) collects, maintains or uses student information;

107 (2) "School purposes" means purposes that customarily take place at
108 the direction of a teacher or a local or regional board of education, or
109 aid in the administration of school activities, including, but not limited
110 to, instruction in the classroom, administrative activities and
111 collaboration among students, school personnel or parents or legal
112 guardians of students;

113 (3) "Student information" means personally identifiable information
114 regarding a student that is (A) created or provided by a student or the
115 parent or legal guardian of a student, to the operator in the course of
116 the student, parent or legal guardian using the operator's Internet web
117 site, online service or mobile application for school purposes, (B)
118 created or provided by an employee or agent of a local or regional
119 board of education to an operator for school purposes, or (C) gathered
120 by an operator through the operation of the operator's Internet web
121 site, online service or mobile application and identifies a student,
122 including, but not limited to, information in the student's records or
123 electronic mail account, first or last name, home address, telephone
124 number, date of birth, electronic mail address, discipline records, test
125 results, grades, evaluations, criminal records, medical records, health
126 records, Social Security number, biometric information, disabilities,
127 socioeconomic information, food purchases, political affiliations,
128 religious affiliations, text messages, documents, student identifiers,
129 search activity, photographs, voice recordings, survey responses or
130 behavioral assessments;

131 (4) "Student" means a child who is a resident of the state and
132 enrolled in (A) a preschool program participating in the state-wide
133 public school information system, pursuant to section 10-10a of the
134 general statutes, or (B) grades kindergarten to twelve, inclusive, in a
135 public school;

136 (5) "De-identified student information" means any student
137 information that has been altered to prevent the identification of an
138 individual student; and

139 (6) "Targeted advertising" means presenting an advertisement to a

140 student where the selection of the advertisement is based on student
141 information or inferred from the usage of the operator's Internet web
142 site, online service or mobile application by such student.

143 (b) An operator shall (1) implement and maintain reasonable
144 security procedures and practices, in accordance with current industry
145 standards, to protect student information from unauthorized access,
146 destruction, use, modification or disclosure, and (2) delete any student
147 information if a student, parent or legal guardian of a student or local
148 or regional board of education requests the deletion of such student
149 information.

150 (c) An operator shall not knowingly:

151 (1) Engage in targeted advertising on the operator's Internet web
152 site, online service or mobile application, or on any other Internet web
153 site, online service or mobile application;

154 (2) Use student information to create a profile of a student for
155 purposes other than the furtherance of school purposes;

156 (3) Sell student information, unless the sale is part of the purchase,
157 merger or acquisition of an operator by a successor operator and the
158 operator and successor operator continue to be subject to the
159 provisions of this section regarding student information; or

160 (4) Disclose student information, unless the disclosure is made (A)
161 in furtherance of school purposes of the Internet web site, online
162 service or mobile application, provided the recipient of the student
163 information uses such student information to improve the operability
164 and functionality of the Internet web site, online service or mobile
165 application and complies with subsection (b) of this section; (B) to
166 ensure compliance with federal or state law; (C) in response to a
167 judicial order; (D) to protect the safety of users or others, or the
168 security of the Internet web site, online service or mobile application;
169 or (E) to an entity hired by the operator to provide services for the
170 operator's Internet web site, online service or mobile application,

171 provided the operator contractually (i) prohibits the entity from using
172 student information for any purpose other than providing the
173 contracted service to, or on behalf of, the operator, (ii) prohibits the
174 entity from disclosing student information provided by the operator to
175 subsequent third parties, and (iii) requires the entity to comply with
176 subsection (b) of this section.

177 (d) An operator may use student information (1) to maintain,
178 support, evaluate or diagnose the operator's Internet web site, online
179 service or mobile application, or (2) for adaptive learning purposes or
180 customized student learning.

181 (e) An operator may use de-identified student information (1) to
182 develop or improve the operator's Internet web site, online service or
183 mobile application, or other Internet web sites, online services or
184 mobile applications owned by the operator, or (2) to demonstrate or
185 market the effectiveness of the operator's Internet web site, online
186 service or mobile application.

187 (f) An operator may share aggregated de-identified student
188 information for the improvement and development of Internet web
189 sites, online services or mobile applications designed for school
190 purposes.

191 (g) Nothing in this section shall be construed to (1) limit the ability
192 of a law enforcement agency to obtain student information from an
193 operator as authorized by law or pursuant to a court order, (2) limit
194 the ability of a student or the parent or legal guardian of a student to
195 download, transfer or otherwise save or maintain student information,
196 (3) impose a duty upon a provider of an interactive computer service,
197 as defined in 47 USC 230, as amended from time to time, to ensure
198 compliance with this section by third-party information content
199 providers, as defined in 47 USC 230, as amended from time to time, (4)
200 impose a duty upon a seller or provider of online services or mobile
201 applications to ensure compliance with this section with regard to such
202 online services or mobile applications, (5) limit an Internet service
203 provider from providing a student, parent or legal guardian of a

204 student or local or regional board of education with the ability to
 205 connect to the Internet, (6) prohibit an operator from advertising other
 206 Internet web sites, online services or mobile applications that are used
 207 for school purposes to parents or legal guardians of students, provided
 208 such advertising does not result from the operator's use of student
 209 information, or (7) apply to Internet web sites, online services or
 210 mobile applications that are designed and marketed for use by
 211 individuals generally, even if the account credentials created for an
 212 operator's Internet web site, online service or mobile application may
 213 be used to access Internet web sites, online services or mobile
 214 applications that are designed and marketed for use by individuals
 215 generally.

216 Sec. 3. (NEW) (*Effective July 1, 2016*) (a) For the purposes of this
 217 section, "directory information" has the same meaning as provided in
 218 34 CFR 99.3, as amended from time to time.

219 (b) Upon determination by a local or regional board of education
 220 that a request for directory information is related to school purposes,
 221 the local or regional board of education may disclose directory
 222 information to any person requesting such directory information. If the
 223 local or regional board of education determines that a request for
 224 directory information is not related to school purposes, the local or
 225 regional board of education shall not disclose such directory
 226 information.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016, and applicable to contracts entered into, amended or renewed on or after said date</i>	New section
Sec. 2	<i>October 1, 2016</i>	New section
Sec. 3	<i>July 1, 2016</i>	New section

Statement of Legislative Commissioners:

In Sections 1(b) and 1(e), references to "October 1, 2016" were added for consistency and clarity, in Section 2(c)(4)(C), "process" was changed to "order" for accuracy and in Section 2(g)(6) "the operator's" was added before "use" for clarity.

ED *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which restricts how software and information contractors and website, internet service, or mobile application operators can use student information, does not result in a fiscal impact as it impacts private individuals and makes procedural changes.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 5469

AN ACT CONCERNING STUDENT DATA PRIVACY.

SUMMARY:

This bill restricts how student information may be used by (1) entities that contract to provide educational software and electronic storage of student records (“contractors”) and (2) operators of websites, online services, or mobile applications (i.e., apps).

Regarding software contractors that do business with local or regional boards of education, the State Board of Education (SBE), or the State Department of Education (SDE), the bill:

1. requires contracts between such contractors and boards of education, SBE, or SDE to contain specific provisions relating to the use and security of student information;
2. prohibits such contractors from using personally identifiable information from student records to engage in advertising or for any purposes other than those contractually authorized; and
3. requires boards of education to notify parents within five business days of executing a contract with such contractors.

The bill also voids any (1) contract provision between these parties that conflicts with the above requirements and prohibitions on or after October 1, 2016 or (2) contract between these parties that fails to include the above required provisions.

For operators of websites, online services, or mobile apps, the bill does the following:

1. requires such operators to maintain reasonable security

practices to protect student information and delete student information upon student, parent, guardian, or board of education request;

2. prohibits such operators from engaging in targeted advertising, creating student profiles for purposes unrelated to school, or selling or disclosing student information, with some exceptions;
3. allows such operators to use student information and de-identified student information for purposes related to student learning or operational improvements.

The bill also requires school districts to withhold the release of student directory information if the local or regional board of education determines that a request for such information is not related to school purposes.

The bill does not provide any specific enforcement mechanism or penalties; however, existing law provides a civil penalty for each violation.

EFFECTIVE DATE: October 1, 2016, and the provision regarding (1) contracts is applicable to contracts entered into, amended, or renewed on or after that date and (2) directory information takes effect July 1, 2016.

§ 1 — RESTRICTIONS ON SOFTWARE AND INFORMATION STORAGE CONTRACTORS

The bill places a number of restrictions on how software and electronic information services contractors can use student information.

It defines contractors as individuals, businesses, or other entities that (1) provide educational software or services for storing, managing, or retrieving electronic student records and (2) receive student records under a written contract with a local or regional board of education, SBE, or SDE.

Under the bill, such contractors are banned from using (1) student records for any purposes other than those the contract authorizes or (2) personally identifiable information contained in student records for advertising.

Student Records

The bill defines “student records” as any information (1) directly related to a student that boards of education, SDE, or SBE maintains and (2) acquired through a student’s use of educational software that a teacher or other public education employee assigned. Student records do not include de-identified student information allowed under the contract that the contractor uses to:

1. improve educational products for adaptive learning purposes and for customizing student learning,
2. demonstrate the contractor's product effectiveness for marketing purposes, and
3. develop and improve the contractor's products and services.

“De-identified student information” means any information that cannot be used to identify an individual student.

Contract Requirements

Under the bill, every contract that a board of education, SDE, or SBE enters into with a contractor, beginning October 1, 2016, must include:

1. a statement that student records and student-generated content are not the property of, or under the control of, a contractor;
2. a statement that the contractor will not use student records for any purposes except those the contract authorizes;
3. a description of the procedures for a student, parent, or guardian to (a) review personally identifiable information in the student record and (b) correct erroneous information, if any, in the record;

4. a description of the actions the contractor agrees to take to ensure student record security and confidentiality;
5. a description of the procedures for notifying a student, parent, or guardian and the board of education, SBE, or SDE (as appropriate) as soon as practical, but not later than 48 hours, after the contractor becomes aware of, or suspects, that any student record under the contractor's control has been subject to unauthorized access or suspected unauthorized access;
6. a statement that the contractor and the board of education, SBE, or SDE will ensure compliance with the federal Family Educational Rights and Privacy Act of 1974 (FERPA), 20 USC 1232g (see BACKGROUND);
7. a description of how a student, parent, or legal guardian of a student may retain possession and control of student-generated content and, if applicable, how a student, parent, or guardian can transfer the student-generated content to an email account;
8. a statement that the contractor will not retain or have available student records after completing the contracted services unless a student, parent, or guardian chooses to establish or maintain an electronic account with the contractor to store student-generated content;
9. a statement that Connecticut law governs the rights and duties of all parties to the contract; and
10. a statement that a court finding of invalidity for any contract provision does not invalidate other contract provisions or applications that are not affected by the finding.

Under the bill "student-generated content" refers to materials a student creates, including essays, research papers, portfolios, creative writing, music or other audio files or photographs, except that it does not include student responses to a standardized assessment.

Notice of Contract Execution

The bill requires boards of education to notify affected students and their parents or guardians within five business days after entering into a contract with a software or information storage contractor. The notice must do the following:

1. state that the contract has been executed and its date of execution,
2. provide a brief description of the contract and its purpose,
3. state what student-generated content or student records may be collected under the contract, and
4. state that the parent or guardian of a student affected by the contract may choose to opt their student out of participation in the contract execution.

§ 2 — RESTRICITONS ON WEBSITE, ONLINE SERVICE, AND APP OPERATORS

The bill restricts Internet website, online service, and app operators from using student information.

Operators

The bill defines these entities as operators of websites, online services, or mobile applications that are designed, used, and marketed for school purposes and who collect, maintain or use student information.

“School purposes” are activities directed by, or customarily take place at the direction of, a public school teacher or board of education and include classroom or at-home instruction, administrative activities, and collaboration among students, school personnel, or parents or guardians of students. (It is unclear what “customarily take place at the direction” of a teacher or board of education means in this context.)

“Students” refers to children who live in Connecticut and are enrolled in (1) a preschool program participating in the statewide

public school information system (see BACKGROUND) or (2) grades kindergarten to 12 in a public school.

Student Information

The bill defines “student information” as personally identifiable information that:

1. a student, parent, or legal guardian creates or provides by using the operator's website, service, or application for school purposes;
2. an employee or agent of a board of education creates or provides to an operator for school purposes; or
3. an operator gathers through the operator's website, service, or application and identifies a student, including (a) information in the student's records or email account; (b) first or last name; (c) home address or telephone number; (d) date of birth; (e) electronic mail address; (f) discipline records; (g) test results; (h) grades; (i) evaluations; (j) criminal, medical, or health records; (k) Social Security number; (l) biometric information; (m) disabilities; (n) socioeconomic information; (o) food purchases; (p) political or religious affiliations; (q) text messages; (r) documents; (s) student identifiers; (t) search activity; (u) photographs or voice recordings; (v) survey responses; or (w) behavioral assessments.

Prohibitions Applying to Operators

The bill prohibits operators from knowingly:

1. engaging in targeted advertising on the operator's or any other website, service, or application, that uses any student information that the operator acquired because a student, parent, or legal guardian used the operator's website, service, or application;
2. using student information created or gathered by the website,

service, or application to create a student profile, except in furthering school purposes;

3. selling student information, unless the sale is part of the purchase, merger or acquisition of an operator by a successor operator and the successor operator continues to be subject to the bill's provisions; and
4. disclosing student information, with some exceptions (see below).

Exceptions that Permit Disclosure

The bill permits operators to disclose student information if the disclosure is made under the following circumstances:

1. in furtherance of school purposes of the website, online service, or app, provided the recipient of the information uses it to improve the functionality of the site, service, or app;
2. to ensure compliance with federal or state law;
3. in response to a judicial order;
4. to protect the safety of users or others, or the security of the website, online service, or app; or
5. to an entity hired by the operator to provide services for the website, online service, or app, as long as the operator contractually (a) prohibits the entity from using the information for any purpose other than providing the contracted service to, or on behalf of, the operator; (b) prohibits the entity from disclosing such student information to subsequent third parties; and (c) requires the entity to agree to maintain security procedures and delete any student information at a student's, parent's, or guardian's request.

Requirement to Protect and, Upon Request, Delete Information

Under the bill, an operator must (1) protect student information

from unauthorized access, whenever and however stored or maintained, in accordance with current industry standards, and (2) delete a student's information if a student, parent, or guardian or the board of education requests the information be deleted.

Current state consumer protection law has a similar provision that requires anyone who possesses another person's personal information to safeguard, among other things, the data and computer files from misuse by third parties (CGS § 42-471). It also requires the data be destroyed or made unusable before it is disposed of. Willful violators may be subject to civil penalties of \$500 for each violation, provided the penalty cannot exceed \$500,000 for any single event.

Use of Student Information to Improve Operator's Service

The bill permits an operator to use de-identified student information to improve the operator's website, service, or application and to market the effectiveness of the website, service, or application. Under the bill, "de-identified student information" refers to any student information that has been altered to prevent the identification of an individual student. It also permits an operator to use aggregated de-identified student information for improvement and development of websites, services, or applications for school purposes.

Another portion of the bill allows the operator to use student information to maintain, support, evaluate, or diagnose the operator's website, service, or application or for adaptive learning purposes or customized student learning without specifying that the information first be de-identified.

Specified Effects

The bill specifies that all of the above provisions applicable to operators of websites, online services, or apps do not do any of the following:

1. limit a law enforcement agency's ability to obtain student information from an operator authorized by law or court order;

2. limit a student's, parent's, or guardian's ability to download, transfer, or otherwise save or maintain student information;
3. impose a duty on an interactive computer services provider, as defined under federal law, to ensure third-party information content providers' compliance with the operator prohibitions and requirements in this bill;
4. impose a duty on a seller or provider of online services or apps to ensure compliance with the operator prohibitions and requirements in this bill regarding such online services or apps;
5. limit an Internet service provider from giving a student, parent, or guardian or a board of education the ability to connect to the Internet;
6. prohibit an operator from advertising other websites, online services, or apps used for school purposes to students' parents or guardians, as long as it does not result from the use of student information; or
7. apply to websites, online services, or apps designed and marketed for general use by individuals.

§ 3 — STUDENT DIRECTORY INFORMATION

Under FERPA, a board of education may disclose directory information if a parent has not made a request to restrict disclosure. The bill defines "directory information" using federal regulations for FERPA (see BACKGROUND).

The bill maintains a local or regional board of education's authority to disclose directory information but prohibits a board from disclosing such information if it determines that the disclosure request is not related to school purposes.

BACKGROUND

Statewide Public Information System

This system is a statewide, standardized electronic database that

tracks and reports data on student, teacher, school, and district performance growth. This data is available to local and regional boards of education for evaluating educational performance and growth of teachers and students enrolled in Connecticut public schools (CGS § 10-10a).

Disclosure of Directory Information under FERPA

FERPA is the federal law that protects the privacy of student education records, with some exceptions (20 USC § 1232g). One exception is that FERPA allows school districts to disclose information they designate as “directory information” without prior parental consent (or student consent if the student is age 18 or older). Once a year, districts must notify parents of the policy and give them the opportunity to restrict the disclosure of directory information. Unless the parent affirmatively requests limiting disclosure, the district can disclose directory information.

Definition of “Directory Information” under FERPA Regulations

“Directory information” means information contained in a student’s education record that would generally not be considered harmful or an invasion of privacy if disclosed.

It includes the following student information:

1. name, address, and telephone listing;
2. electronic mail address;
3. photograph;
4. date and place of birth;
5. major field of study;
6. grade level and enrollment status;
7. dates of attendance;
8. participation in officially recognized activities and sports;

- 9. weight and height of sports team members;
- 10. degrees, honors, and awards received;
- 11. most recent educational agency or institution attended; and
- 12. certain student identification (ID) numbers or unique personal identifiers that cannot be used to gain access to educational records.

Directory information does not include a student's social security number or student ID number that can be used to gain access to educational records (34 CFR § 99.3).

COMMITTEE ACTION

Education Committee

Joint Favorable Substitute

Yea 33 Nay 0 (03/18/2016)