



Connecticut Parent
Teachers Association
(CTPTA)

CT Parental Rights
Coalition
(CPRC)

American Civil Liberties
Union
(ACLU- CT)

Connecticut Parent
Advocacy Center
(CPAC)

CT Association of Private
Special Education
Facilities
(CAPSEF)

CT Council of
Administrators of Special
Education
(ConnCASE)

Connecticut Federation of
School Administrators
(CFSA)

Connecticut Association
of School Administrators
(CASA)

American Federation of
Teachers - CT
(AFT-CT)

Connecticut Education
Association
(CEA)

CEA College Student
Program
(CEASP)

Testimony of

Jenn Jacobsen

HB 5469 An Act Concerning Student Data Privacy

Dear Senator Slossberg, Representative Fleischman and members of the Education Committee,

My name is Jennifer Jacobsen. I thank you for your continued attention to this pressing issue of concern for so many. I am speaking today on the behalf of the Connecticut Alliance for Privacy in Education- CAPE- representing a diverse membership of organizations who have come together to advocate for a comprehensive student data law in our state.

Who We Are:

The mission of the Connecticut Alliance for Privacy in Education (CAPE) is to protect the children, students, families, and educators of Connecticut by addressing the risks associated with the collection of student data and other educational records.

The issue of student data transparency and security is of national concern that touches every citizen of our state. Connecticut is among a small minority of states that have yet to enact legislation pertaining to the protection and use of student data, leaving our children and families inadequately protected.

There is great potential for the appropriate use of student data to bring positive outcomes for our children and students. However, the use of student data also brings with it immense responsibility and great risk to the safety and civil liberties of children and families. Policymakers, educators, parents, and communities must ensure that all individuals and entities who have access to student data take steps to protect the lives behind the data. Together we must ensure that appropriate protections, safeguards, rules, and regulations are established to guarantee data security and privacy for students and their families.

HB 5469 does accomplish some welcome changes in policy:

The prohibition on student tracking and profiling, limiting data collection by school contracted apps and websites, the limitation on advertising, the requirement of de-identification of student information for use to improve a site or product, and the limited use of Directory Information are examples of such improvements. Further, the inclusion of a parent notification provision that their child has become a party to a contract or when there has been a breach are additional strengths of the bill. We thank you for their inclusion for greater parental awareness and transparency.

CAPE has summarized HB 5469 into 5 categories for testimony:

- A) Student Electronic Devices, Apps and Online Services
- B) Parental & Educator Notification, Engagement and Transparency
- C) Student Data Protection, Training and Oversight
- D) Student Data and Third Party Contracts
- E) State Data Collection and Compiling

For easy reference a checklist has been attached to my testimony that can be used as summary of what is included herein.

Section A Limitations: Student Electronic Devices, Apps and Online Services

1. The bill does not address search and seizure of personal electronic devices protections, prohibit remotely accessible webcams on school issued devices, or ensure security of school issued passwords.
2. The limited scope of the bill only covers “Contractors” that pertain to educational software or services for the storage or management of student records and “Operators” of websites and apps, thereby excluding from the bill all of the individuals, agencies and entities that collect, share or grant access to student confidential information. We feel that ALL personal data that is collected, shared and accessed should be privy to a student data privacy bill and be protected wherever and in whatever format that data is used, stored, transmitted or accessed to fully protect that student, with enforcement provisions.
3. Finally, when discussing Apps and Online Services COPPA provides federal policy guidelines that are applicable to children under 13 (but unenforced) and could be extended to all students in prek-12. We can simply use what already exists.

Section B Limitations: Parental & Educator Notification, Engagement and Transparency

1. The bill does not extend the parent notification and access provision in Section 1 to state agency data collection, nor grant consent to parents (formerly contained in FERPA) to the disclosure of identifiable information. State agency collection continues to be a concern when parents have not been informed about, nor permitted to know, “who has had access” to their child’s information. We feel strongly that any data bill should adequately inform parents of all data, to whom, for what purpose, how it is protected, and protections against any unauthorized access regardless of where the data is housed or who possesses it.

2. The provisions in the bill that allow parents to inspect, correct and remove information covers only data held by Operators (Sec. 2 (b)); it should also be extended to the Contractor Section as well – except that which is required for federal reporting purposes. We are collecting a lot more than what is mandated to report.
3. Most states that have enacted legislation surrounding student data have put a limit on student information that is sensitive in nature leaving districts to third parties. From a long list in New Hampshire to a more commonly held standard amongst many states – juvenile delinquency records, criminal records, medical records are repeatedly protected in other state laws and cannot be disclosed in any identifiable manner (except as required for federal reporting). States have done this for a reason – to prevent the misuse of information that could affect the life of an individual.
4. Lastly, parents and eligible students are not present on any board or council that governs student data. Such boards and councils should have regular parent input and representation that is independent from public agencies and other entities that collect or seek data.

Section C Limitations: Student Data Protection, Training and Oversight

1. The limitation on the use of Directory Information is also welcome in this bill for appropriate school uses. Around the state different districts use different definitions of what constitutes Directory Information. While that is a local decision it would be helpful if districts had guidelines that limit what can be defined as Directory Information to that for which most people use it for – contacting other families – name, address, telephone # and email address. (lines 207-217)
2. As formal training can be costly, guidance to teachers on simple ways to ensure they are implementing best practices and current law when utilizing online teaching tools. In particular, guides providing awareness regarding passwords that do not include PII, that students under 13 cannot agree to terms of use and require parental consent, and that tools are well chosen based on terms of use agreements and privacy policies that do not permit re-disclosure or sale of student information could be a simple resource for use in schools.
3. Require independent audits of public agency and third party data handling. Without such audits or enforcement mechanisms the contract provisions become guidelines.
4. Research using student information. As we use student information to improve educational outcomes, we at the same time have not defined in law the ways in which student information cannot be used outside of that limited provision. Federal grants that had initially funded our state systems before evaporating, came with provisions that prohibited the use of student information for research purposes that ***“could place the participants at risk of criminal or civil liability or be damaging to the participants’ financial standing, employability or reputation”***. Therefore, **incorporating this information in law and policy would be an easy way to responsibly limit the uses of student information.**

5. Finally, the reach of the bill should cover all students covered under FERPA, pre-k to college. As per the CT PTA testimony, students in this legislation are defined as those “enrolled in grades kindergarten to twelve”. Student data should cover a child’s entire educational career and since many public schools operate preschool programs we would like to see them also covered by this legislation as well as older students who are in special programs. (Line 126-127)

Section D: Student Data and Third Party Contracts

1. The definition of Contractor as an “individual, business or other entity” that is limited to data storage software or services limits the scope of the bill and should extend to all contracts that use identifiable student and parent information. (Lines 4-8)
2. The definition of Operator as “a person” should match that of Contractor as also an “individual, business or other entity” to cover the scope possible operator entities. (Line 98)
3. “Industry standard” could be better defined to establish uniform data security and cloud storage provisions linked to specific industry security guidelines or body including up to date encryption that evolves as technology does. (Lines 135-138)
4. The notice of Breach is a welcome provision of this bill. We recommend strengthening that section by establishing audit and enforcement mechanisms, penalties, fines, and a private right of action for damages where a violation of statute has occurred. A statement of breach is helpful but if we are going to use student information that assumes risk to the student, in an instance where an unauthorized access has occurred, there should be accountability for fixing the damage by the contractor, operator, individual, business or other entity. (Lines 50-56)
5. As data is not only disclosed to operators or contractors as defined in this bill but to other entities as well, for research purposes or to perform a service for the school district we feel that the parameters around such disclosure should be enacted. They should include background checks, data handling training for anyone who is to receive and handle student data, registration with the state, and provisions holding them to the same security, notice, transparency and breach provisions as operators and contractors.
6. The section on contractors permits a contractor to subcontract and share PII with another entity. Although the bill prohibits that third party from any further re-disclosure, and requires such subcontractors to comply with other data protections and parental rights (lines 139-141), little else is required to be disclosed about the subcontractors. In order to implement that provision, we would need to know who those subcontractors or third parties are. An addition to accomplish that would be to add to line 168 “(iv) ***any operator who hires and entity to provide services for the operators’ internet web site, online service or mobile application shall list such entities within their terms of use or privacy policy disclosure.***” (Line 161-168)

Section E: State Data Collection and Compiling

1. As several other states have implemented, we feel it is important to have a state based role akin to a Chief Privacy Officer (CPO) housed within SDE, coupled with an oversight board that includes citizens. There is wide held knowledge that every day citizens are not being adequately informed, nor represented on boards or councils and therefore have little to no voice in policy or even in awareness. The CPO could be a designation of an existing position within available appropriations.
2. In other states, any addition of data elements to be collected by state agency or the expansion in participating agencies is presented to the education committee each year so that they may be aware of the growth and be able to advocate for and inform their constituents (e.g. Arkansas and Maryland). New Hampshire requires a log notice of who was granted access to data. Having the Committee and General Assembly as a part of this process ensures their awareness and provides checks and balances across government.
3. At this point we feel that the state agency agreements have significant holes within them that do not provide our representatives with the knowledge of how they are operated or how they use student information. We feel a moratorium on any further expansion should be enacted while a more holistic and balanced approach can be instituted in policy.

Conclusion:

The appropriate use of student data to improve outcomes for students is real, however that use also comes with great responsibility and risk. When sensitive student information enters into a data system or leaves the school building to an outside party risk ensues. It is at the point when student information is poised to leave the school, that the system to protect that data must begin. Connecticut's system to protect student information needs to be far more effective, uniform, and transparent than it is today. This is an attainable goal. We cannot allow for interest in the data, special or otherwise, to supersede the digital security of our children, nor infringe upon their civil liberties, nor keep our parents and guardians in the dark any longer. The clarifications, amendments and additions to this bill suggested in this testimony and the members of CAPE would take us far toward accomplishing that goal.

It is with this vision of care and protection of this generation's future, free and unhindered from a lifetime of collected information that may come to be used against them that we, the members of CAPE, in partnership with countless thousands of people around Connecticut call on the Education Committee and the full General Assembly in partnership with our Leadership to do the right thing for the students of this state and enact an comprehensive student data security, transparency, and privacy law. So many other states have already accomplished this. Our kids and our families deserve no less than those in other states.

Thank you!

Sincerely,
Jennifer Jacobsen, M.S.Ed.
Director, CAPE