



General Assembly

Amendment

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LCO No. 5942



Offered by:

REP. FLEISCHMANN, 18th Dist.
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Dist.
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To: Subst. House Bill No. 5469

File No. 527

Cal. No. 329

"AN ACT CONCERNING STUDENT DATA PRIVACY."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2016*) As used in this section
4 and sections 2 to 4, inclusive:

5 (1) "Contractor" means an operator or consultant that is in
6 possession of or has access to student information, student records or
7 student-generated content as a result of a contract with a local or
8 regional board of education;

9 (2) "Operator" means any person who (A) operates an Internet web
10 site, online service or mobile application with actual knowledge that
11 such Internet web site, online service or mobile application is used for
12 school purposes and was designed and marketed for school purposes,

13 to the extent it is engaged in the operation of such Internet web site,
14 online service or mobile application, and (B) collects, maintains or uses
15 student information;

16 (3) "Consultant" means a professional who provides
17 noninstructional services, including, but not limited to, administrative,
18 planning, analysis, statistical or research services, to a local or regional
19 board of education pursuant to a contract with such local or regional
20 board of education;

21 (4) "Student information" means personally identifiable information
22 or material of a student in any media or format that is not publicly
23 available and is any of the following: (A) Created or provided by a
24 student or the parent or legal guardian of a student, to the operator in
25 the course of the student, parent or legal guardian using the operator's
26 Internet web site, online service or mobile application for school
27 purposes, (B) created or provided by an employee or agent of a local or
28 regional board of education to an operator for school purposes, or (C)
29 gathered by an operator through the operation of the operator's
30 Internet web site, online service or mobile application and identifies a
31 student, including, but not limited to, information in the student's
32 records or electronic mail account, first or last name, home address,
33 telephone number, date of birth, electronic mail address, discipline
34 records, test results, grades, evaluations, criminal records, medical
35 records, health records, Social Security number, biometric information,
36 disabilities, socioeconomic information, food purchases, political
37 affiliations, religious affiliations, text messages, documents, student
38 identifiers, search activity, photographs, voice recordings, survey
39 responses or behavioral assessments;

40 (5) "Student record" means any information directly related to a
41 student that is maintained by a local or regional board of education,
42 the State Board of Education or the Department of Education or any
43 information acquired from a student through the use of educational
44 software assigned to the student by a teacher or employee of a local or
45 regional board of education, except "student record" does not include

46 de-identified student information allowed under the contract to be
47 used by the contractor to (A) improve educational products for
48 adaptive learning purposes and customize student learning, (B)
49 demonstrate the effectiveness of the contractor's products in the
50 marketing of such products, and (C) develop and improve the
51 contractor's products and services;

52 (6) "Student-generated content" means any student materials
53 created by a student including, but not limited to, essays, research
54 papers, portfolios, creative writing, music or other audio files or
55 photographs, except "student-generated content" does not include
56 student responses to a standardized assessment;

57 (7) "Directory information" has the same meaning as provided in 34
58 CFR 99.3, as amended from time to time;

59 (8) "School purposes" means purposes that customarily take place at
60 the direction of a teacher or a local or regional board of education, or
61 aid in the administration of school activities, including, but not limited
62 to, instruction in the classroom, administrative activities and
63 collaboration among students, school personnel or parents or legal
64 guardians of students;

65 (9) "Student" means a person who is a resident of the state and (A)
66 enrolled in a preschool program participating in the state-wide public
67 school information system, pursuant to section 10-10a of the general
68 statutes, (B) enrolled in grades kindergarten to twelve, inclusive, in a
69 public school, (C) receiving special education and related services
70 under an individualized education program, or (D) otherwise the
71 responsibility of a local or regional board of education;

72 (10) "Targeted advertising" means presenting an advertisement to a
73 student where the selection of the advertisement is based on student
74 information, student records or student-generated content or inferred
75 over time from the usage of the operator's Internet web site, online
76 service or mobile application by such student or the retention of such
77 student's online activities or requests over time for the purpose of

78 targeting subsequent advertisements. "Targeted advertising" does not
79 include any advertising to a student on an Internet web site that such
80 student is accessing at the time or in response to a student's response
81 or request for information or feedback;

82 (11) "De-identified student information" means any student
83 information that has been altered to prevent the identification of an
84 individual student; and

85 (12) "Persistent unique identifier" means a unique piece of
86 information that can be used to recognize a user over time and across
87 different Internet web sites, online services or mobile applications and
88 is acquired as a result of the use of a student's use of an operator's
89 Internet web site, online service or mobile application.

90 Sec. 2. (NEW) (*Effective October 1, 2016, and applicable to contracts*
91 *entered into, amended or renewed on or after said date*) (a) On and after
92 October 1, 2016, a local or regional board of education shall enter into a
93 written contract with a contractor any time such local or regional
94 board of education shares or provides access to student information,
95 student records or student-generated content with such contractor.
96 Each such contract shall include, but need not be limited to, the
97 following:

98 (1) A statement that student information, student records and
99 student-generated content are not the property of or under the control
100 of a contractor;

101 (2) A description of the means by which the local or regional board
102 of education may request the deletion of student information, student
103 records or student-generated content in the possession of the
104 contractor;

105 (3) A statement that the contractor shall not use student
106 information, student records and student-generated content for any
107 purposes other than those authorized pursuant to the contract;

108 (4) A description of the procedures by which a student, parent or
109 legal guardian of a student may review personally identifiable
110 information contained in student information, student records or
111 student-generated content and correct erroneous information, if any, in
112 such student record;

113 (5) A statement that the contractor shall take actions designed to
114 ensure the security and confidentiality of student information, student
115 records and student-generated content;

116 (6) A description of the procedures that a contractor will follow to
117 notify the local or regional board of education, in accordance with the
118 provisions of section 4 of this act, when there has been an
119 unauthorized release, disclosure or acquisition of student information,
120 student records or student-generated content;

121 (7) A statement that student information, student records or
122 student-generated content shall not be retained or available to the
123 contractor upon completion of the contracted services unless a student,
124 parent or legal guardian of a student chooses to establish or maintain
125 an electronic account with the contractor for the purpose of storing
126 student-generated content;

127 (8) A statement that the contractor and the local or regional board of
128 education shall ensure compliance with the Family Educational Rights
129 and Privacy Act of 1974, 20 USC 1232g, as amended from time to time;

130 (9) A statement that the laws of the state of Connecticut shall govern
131 the rights and duties of the contractor and the local or regional board
132 of education; and

133 (10) A statement that if any provision of the contract or the
134 application of the contract is held invalid by a court of competent
135 jurisdiction, the invalidity does not affect other provisions or
136 applications of the contract which can be given effect without the
137 invalid provision or application.

138 (b) All student-generated content shall be the property of the
139 student or the parent or legal guardian of the student.

140 (c) A contractor shall implement and maintain security procedures
141 and practices designed to protect student information, student records
142 and student-generated content from unauthorized access, destruction,
143 use, modification or disclosure that, based on the sensitivity of the data
144 and the risk from unauthorized access, (1) use technologies and
145 methodologies that are consistent with the guidance issued pursuant
146 to section 13402(h)(2) of Public Law 111-5, as amended from time to
147 time, (2) maintain technical safeguards as it relates to the possession of
148 student records in a manner consistent with the provisions of 45 CFR
149 164.312, as amended from time to time, and (3) otherwise meet or
150 exceed industry standards.

151 (d) A contractor shall not use (1) student information, student
152 records or student-generated content for any purposes other than
153 those authorized pursuant to the contract, or (2) personally identifiable
154 information contained in student information, student records or
155 student-generated content to engage in targeted advertising.

156 (e) Any provision of a contract entered into between a contractor
157 and a local or regional board of education on or after October 1, 2016,
158 that conflicts with any provision of this section shall be void.

159 (f) Any contract entered into on and after October 1, 2016, that does
160 not include a provision required by subsection (a) of this section shall
161 be void, provided the local or regional board of education has given
162 reasonable notice to the contractor and the contractor has failed within
163 a reasonable time to amend the contract to include the provision
164 required by subsection (a) of this section.

165 (g) Not later than five business days after executing a contract
166 pursuant to this section, a local or regional board of education shall
167 provide electronic notice to any student and the parent or legal
168 guardian of a student affected by the contract. The notice shall (1) state
169 that the contract has been executed and the date that such contract was

170 executed, (2) provide a brief description of the contract and the
171 purpose of the contract, and (3) state what student information,
172 student records or student-generated content may be collected as a
173 result of the contract. The local or regional board of education shall
174 post such notice and the contract on the board's Internet web site.

175 Sec. 3. (NEW) (*Effective October 1, 2016*) (a) An operator shall (1)
176 implement and maintain security procedures and practices that meet
177 or exceed industry standards and that are designed to protect student
178 information, student records and student-generated content from
179 unauthorized access, destruction, use, modification or disclosure, and
180 (2) delete any student information, student records or student-
181 generated content within a reasonable amount of time if a student,
182 parent or legal guardian of a student or local or regional board of
183 education who has the right to control such student information
184 requests the deletion of such student information, student records or
185 student-generated content.

186 (b) An operator shall not knowingly:

187 (1) Engage in (A) targeted advertising on the operator's Internet web
188 site, online service or mobile application, or (B) targeted advertising on
189 any other Internet web site, online service or mobile application if such
190 advertising is based on any student information, student records,
191 student-generated content or persistent unique identifiers that the
192 operator has acquired because of the use of the operator's Internet web
193 site, online service or mobile application for school purposes;

194 (2) Collect, store and use student information, student records,
195 student-generated content or persistent unique identifiers for purposes
196 other than the furtherance of school purposes;

197 (3) Sell, rent or trade student information, student records or
198 student-generated content unless the sale is part of the purchase,
199 merger or acquisition of an operator by a successor operator and the
200 operator and successor operator continue to be subject to the
201 provisions of this section regarding student information; or

202 (4) Disclose student information, student records or student-
203 generated content unless the disclosure is made (A) in furtherance of
204 school purposes of the Internet web site, online service or mobile
205 application, provided the recipient of the student information uses
206 such student information to improve the operability and functionality
207 of the Internet web site, online service or mobile application and
208 complies with subsection (a) of this section; (B) to ensure compliance
209 with federal or state law or regulations or pursuant to a court order;
210 (C) in response to a judicial order; (D) to protect the safety or integrity
211 of users or others, or the security of the Internet web site, online service
212 or mobile application; (E) to an entity hired by the operator to provide
213 services for the operator's Internet web site, online service or mobile
214 application, provided the operator contractually (i) prohibits the entity
215 from using student information, student records or student-generated
216 content for any purpose other than providing the contracted service to,
217 or on behalf of, the operator, (ii) prohibits the entity from disclosing
218 student information, student records or student-generated content
219 provided by the operator to subsequent third parties, and (iii) requires
220 the entity to comply with subsection (a) of this section; or (F) for a
221 school purpose or other educational or employment purpose requested
222 by a student or the parent or legal guardian of a student, provided
223 such student information is not used or disclosed for any other
224 purpose.

225 (c) An operator may use student information (1) to maintain,
226 support, improve, evaluate or diagnose the operator's Internet web
227 site, online service or mobile application, (2) for adaptive learning
228 purposes or customized student learning, (3) to provide
229 recommendation engines to recommend content or services relating to
230 school purposes or other educational or employment purposes,
231 provided such recommendation is not determined in whole or in part
232 by payment or other consideration from a third party, or (4) to respond
233 to a request for information or feedback from a student, provided such
234 response is not determined in whole or in part by payment or other
235 consideration from a third party.

236 (d) An operator may use de-identified student information or
237 aggregated student information (1) to develop or improve the
238 operator's Internet web site, online service or mobile application, or
239 other Internet web sites, online services or mobile applications owned
240 by the operator, or (2) to demonstrate or market the effectiveness of the
241 operator's Internet web site, online service or mobile application.

242 (e) An operator may share aggregated student information or de-
243 identified student information for the improvement and development
244 of Internet web sites, online services or mobile applications designed
245 for school purposes.

246 (f) Nothing in this section shall be construed to (1) limit the ability of
247 a law enforcement agency to obtain student information, student
248 records or student-generated content from an operator as authorized
249 by law or pursuant to a court order, (2) limit the ability of a student or
250 the parent or legal guardian of a student to download, export, transfer
251 or otherwise save or maintain student information, student records or
252 student-generated content, (3) impose a duty upon a provider of an
253 interactive computer service, as defined in 47 USC 230, as amended
254 from time to time, to ensure compliance with this section by third-
255 party information content providers, as defined in 47 USC 230, as
256 amended from time to time, (4) impose a duty upon a seller or
257 provider of an electronic store, gateway, marketplace or other means
258 of purchasing or downloading software applications to review or
259 enforce compliance with this section on such software applications, (5)
260 limit an Internet service provider from providing a student, parent or
261 legal guardian of a student or local or regional board of education with
262 the ability to connect to the Internet, (6) prohibit an operator from
263 advertising other Internet web sites, online services or mobile
264 applications that are used for school purposes to parents or legal
265 guardians of students, provided such advertising does not result from
266 the operator's use of student information, student records or student-
267 generated content, or (7) apply to Internet web sites, online services or
268 mobile applications that are designed and marketed for use by
269 individuals generally, even if the account credentials created for an

270 operator's Internet web site, online service or mobile application may
271 be used to access Internet web sites, online services or mobile
272 applications that are designed and marketed for school purposes.

273 Sec. 4. (NEW) (*Effective October 1, 2016*) (a) (1) Upon the discovery of
274 a breach of security that results in the unauthorized release, disclosure
275 or acquisition of student information, excluding any directory
276 information contained in such student information, a contractor shall
277 notify, without unreasonable delay, but not more than thirty days after
278 such discovery, the local or regional board of education of such breach
279 of security. During such thirty-day period, the contractor may (A)
280 conduct an investigation to determine the nature and scope of such
281 unauthorized release, disclosure or acquisition, and the identity of the
282 students whose student information is involved in such unauthorized
283 release, disclosure or acquisition, or (B) restore the reasonable integrity
284 of the contractor's data system.

285 (2) Upon the discovery of a breach of security that results in the
286 unauthorized release, disclosure or acquisition of directory
287 information, student records or student-generated content, a contractor
288 shall notify, without unreasonable delay, but not more than sixty days
289 after such discovery, the local or regional board of education of such
290 breach of security. During such sixty-day period, the contractor may
291 (A) conduct an investigation to determine the nature and scope of such
292 unauthorized release, disclosure or acquisition, and the identity of the
293 students whose directory information, student records or student-
294 generated content is involved in such unauthorized release, disclosure
295 or acquisition, or (B) restore the reasonable integrity of the contractor's
296 data system.

297 (3) Upon receipt of notice of a breach of security under subdivisions
298 (1) or (2) of this subsection, a local or regional board of education shall
299 electronically notify, not later than forty-eight hours after receipt of
300 such notice, the student and the parents or guardians of the student
301 whose student information, student records or student-generated
302 content is involved in such breach of security. The local or regional

303 board of education shall post such notice on the board's Internet web
304 site.

305 (b) Upon the discovery of a breach of security that results in the
306 unauthorized release, disclosure or acquisition of student information,
307 student records or student-generated content, an operator that is in
308 possession of or maintains student information, student records or
309 student-generated content as a result of a student's use of such
310 operator's Internet web site, online service or mobile application, shall
311 (1) notify, without unreasonable delay, but not more than thirty days
312 after such discovery, the student or the parents or guardians of such
313 student of any breach of security that results in the unauthorized
314 release, disclosure or acquisition of student information, excluding any
315 directory information contained in such student information, of such
316 student, and (2) notify, without unreasonable delay, but not more than
317 sixty days after such discovery, the student or the parents or guardians
318 of such student of any breach of security that results in the
319 unauthorized release, disclosure or acquisition of directory
320 information, student records or student-generated content of such
321 student. During such thirty-day or sixty-day period, the operator may
322 (A) conduct an investigation to determine the nature and scope of such
323 unauthorized release, disclosure or acquisition, and the identity of the
324 students whose student information, student records or student-
325 generated content are involved in such unauthorized release,
326 disclosure or acquisition, or (B) restore the reasonable integrity of the
327 operator's data system.

328 Sec. 5. (*Effective from passage*) (a) There is established a task force to
329 study issues relating to student data privacy. Such study shall include,
330 but not be limited to, an examination of (1) when a parent or guardian
331 of a student may reasonably or appropriately request the deletion of
332 student information, student records or student-generated content that
333 is in the possession of a contractor or operator, (2) means of providing
334 notice to parents and guardians of students when a student uses an
335 Internet web site, online service or mobile application of an operator
336 for instructional purposes in a classroom or as part of an assignment

337 by a teacher, (3) reasonable penalties for violations of the provisions of
338 sections 2 to 4, inclusive, of this act, such as restricting a contractor or
339 operator from accessing or collecting student information, student
340 records or student-generated content, (4) strategies in effect in other
341 states that ensure that school employees, contractors and operators are
342 trained in data security handling, compliance and best practices, (5) the
343 feasibility of developing a school district-wide list of approved Internet
344 web sites, online services and mobile applications, (6) the use of an
345 administrative hearing process designed to provide legal recourse to
346 students and parents and guardians of students aggrieved by any
347 violation of sections 2 to 4, inclusive, of this act, (7) the feasibility of
348 creating an inventory of student information, student records and
349 student-generated content currently collected pursuant to state and
350 federal law, (8) the feasibility of developing a tool kit for use by local
351 and regional boards of education to (A) improve student data
352 contracting practices and compliance, including a state-wide template
353 for use by districts, (B) increase school employee awareness of student
354 data security best practices, including model training components, (C)
355 develop district-wide lists of approved software applications and
356 Internet web sites, and (D) increase the availability and accessibility of
357 information on student data privacy for parents and guardians of
358 students and educators, and (9) any other issue involving student data
359 security that the task force deems relevant.

360 (b) The task force shall consist of the following members:

361 (1) One appointed by the speaker of the House of Representatives
362 who is an operator, as defined in section 1 of this act;

363 (2) One appointed by the president pro tempore of the Senate who
364 is a representative of the Connecticut Parent Teacher Association;

365 (3) One appointed by the majority leader of the House of
366 Representatives who is a contractor, as defined in section 1 of this act;

367 (4) One appointed by the majority leader of the Senate who is an
368 expert in information technology systems;

369 (5) One appointed by the minority leader of the House of
370 Representatives who is a student privacy advocate;

371 (6) One appointed by the minority leader of the Senate who is a
372 representative of the Connecticut Association of School
373 Administrators;

374 (7) The Attorney General, or the Attorney General's designee;

375 (8) The Commissioner of the State Department of Education or the
376 Commissioner's designee; and

377 (9) Five persons appointed by the Governor, one of whom is a
378 representative of the American Federation of Teachers, one of whom is
379 a representative of the Connecticut Association of Boards of Education,
380 one of whom is an expert in information technology systems, one of
381 whom is a representative or member of the Connecticut Association of
382 Public School Superintendents, and one of whom is a representative of
383 the Connecticut Education Association.

384 (c) All appointments to the task force shall be made not later than
385 thirty days after the effective date of this section. Any vacancy shall be
386 filled by the appointing authority.

387 (d) The speaker of the House of Representatives and the president
388 pro tempore of the Senate shall select the chairpersons of the task force
389 from among the members of the task force. Such chairpersons shall
390 schedule the first meeting of the task force, which shall be held not
391 later than sixty days after the effective date of this section.

392 (e) The administrative staff of the joint standing committee of the
393 General Assembly having cognizance of matters relating to general
394 law shall serve as administrative staff of the task force.

395 (f) Not later than January 1, 2017, the task force shall submit a report
396 on its findings and recommendations to the joint standing committee
397 of the General Assembly having cognizance of matters relating to
398 general law and education, in accordance with the provisions of

399 section 11-4a of the general statutes. The task force shall terminate on
 400 the date that it submits such report or January 1, 2017, whichever is
 401 later."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>October 1, 2016, and applicable to contracts entered into, amended or renewed on or after said date</i>	New section
Sec. 3	<i>October 1, 2016</i>	New section
Sec. 4	<i>October 1, 2016</i>	New section
Sec. 5	<i>from passage</i>	New section