



STUDENT DATA SERVICE CONTRACTS FOR PUBLIC SCHOOLS

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ISSUE

Summarize Public Act [16-189](#), *An Act Concerning Student Data Privacy*, focusing on provisions the act requires in contracts between student data service contractors and local and regional boards of education. Address whether the act requires choice of law and forum selection clauses to appear in these contracts.

SUMMARY

PA 16-189, among other things, restricts how student information, student records, or student-generated content ("student data") may be used by (1) contractors that provide student data services to boards of education and (2) certain operators of websites, online services, or mobile applications ("apps"). It also requires these contractors and operators to safeguard student data and prescribes how they must respond to security breaches involving student data in their possession.

Beginning October 1, 2016, the act requires boards of education to enter into contracts with any contractor with whom they share or provide access to student data. Under the act, these contracts must contain 10 specific provisions.

These contracts must include a choice of law provision stating that Connecticut law governs the rights and duties of all parties to the contract, but not a forum selection clause.

REQUIRED CONTRACTUAL PROVISIONS

Prior to this law's effective date, boards of education were not obligated to enter into written agreements with contractors that have access to their student data. PA 16-189 now requires these parties to sign contracts containing 10 specific provisions beginning October 1, 2016. (If a board is already a party to such a contract, however, that contract remains in force until it expires.)

The required provisions govern the areas of student data control and privacy; procedures for extending student data control to boards of education, students, parents, and guardians; and contract interpretation.



Data Control

The contract must state the following regarding contractor control over student data:

1. student records, student information, and student-generated content are not the property of, or under the control of, a contractor;
2. the contractor will not use student information, student records, and student-generated content for any purposes except those the contract authorizes; and
3. the contractor will not retain or have available student information, student records, or student-generated content 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.

Data Privacy

Additionally, the contract must include these provisions regarding the contractor's efforts to protect student data privacy:

1. the contractor must take actions designed to ensure security and confidentiality of student information, student records, and student-generated content and
2. the contractor and the board of education must ensure compliance with the federal Family Educational Rights and Privacy Act of 1974 (FERPA).

Procedures to Extend Control

The contract must also include the following provisions that extend control over the data to boards of education, students, and their parents and guardians:

1. a description of how the board may request deletion of student information, student records, or student-generated content in the contractor's possession;
2. procedures for a student, parent, or guardian to (a) review personally identifiable information in student information, student records, and student-generated content and (b) correct erroneous information, if any, in the record; and
3. procedures that a contractor will follow to notify the board when there has been an unauthorized release, disclosure, or acquisition of student information, student records, or student-generated content.

Contract Interpretation

Finally, these two statements must appear in the contract, which pertain to its interpretation and validity:

1. a choice of law provision, stating that Connecticut law governs the rights and duties of all parties to the contract, and
2. a court finding of invalidity of any contract provision does not invalidate other contract provisions or applications not affected by the finding.

Under the act, a contractual provision is void if it conflicts with any of the above 10 provisions. Similarly, a contract is void if it lacks any of these provisions; however, the board must give the contractor reasonable notice to amend the contract to include the missing provisions.

DEFINED TERMS

Table 1 describes the three student data categories affected by PA 16-189.

Table 1: Student Data Categories in PA 16-189, § 1

<i>Data Category</i>	<i>Definitions and Examples</i>
Student information	Personally identifiable information or student material in any media or format that is not publicly available
Student records	Any information (1) directly related to a student that boards of education, the State Department of Education, or the State Board of Education maintains or (2) acquired through a student's use of educational software that a teacher or other public education employee assigned
Student-generated content	Any student materials created by a student Examples include essays, research papers, portfolios, creative writing, music, audio files, or photographs

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