

ASSEMBLY, No. 1272

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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District 36 (Bergen and Passaic)

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SYNOPSIS

“Student Digital Privacy and Parental Rights Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 11/15/2016)

1 AN ACT concerning the privacy of certain student digital
2 information and supplementing chapter 36 of Title 18A of the
3 New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the “Student
9 Digital Privacy and Parental Rights Act.”

10

11 2. As used in this act:

12 “Covered information” means personally identifiable information
13 and information that is linked or linkable to personally identifiable
14 information that:

15 a. is collected or generated through a school service; and

16 b. (1) the operator of the school service knows or should know
17 relates to a student, or

18 (2) is collected, generated, or maintained at the direction of the
19 public or nonpublic school serving the student or at the direction of
20 officials of that school, including teachers.

21 “K-12 purposes” means purposes that: aid in the administration
22 of activities by a public or nonpublic school, including instruction
23 in the classroom or at home, administrative activities, and
24 collaboration between students, school personnel, or parents and
25 guardians; or are for the use and benefit of the public or nonpublic
26 school.

27 “Online contact information” means, with respect to a student, an
28 email address or any other substantially similar identifier that
29 permits direct contact with the student online, including an instant
30 messaging user identifier, a Voice Over Internet Protocol identifier,
31 a video chat user identifier, or a screen name or user name that
32 permits the contact.

33 “Operator” means an entity that operates a school service, except
34 that the term shall not include a public or nonpublic school.

35 “Personally identifiable information” includes, with respect to a
36 student: the student’s first and last name; the first and last name of
37 the student’s parent or guardian or another family member; the
38 home or physical address of the student or student’s family; online
39 contact information for the student; a personal identifier, such as the
40 student’s social security number, student number, or biometric
41 record; a persistent identifier that can be used to recognize a user
42 over time and across different Internet Web sites, online services,
43 online applications, or mobile applications, including a customer
44 number held in a cookie, an Internet Protocol address, a processor
45 or device serial number, or another unique identifier; a photograph,
46 video, or audio recording that contains the student’s image or voice;
47 geolocation information sufficient to identify a street name and the
48 name of a city or town; other indirect identifiers, such as the

1 student's date of birth, place of birth, or mother's maiden name;
2 other information that, alone or in combination, would allow an
3 operator or a reasonable person in the school community, who does
4 not have personal knowledge of the relevant circumstances, to
5 identify a specific student with reasonable certainty; and
6 information requested by a person who the public or nonpublic
7 school reasonably believes knows the identity of the student to
8 whom the information relates.

9 "School service" means an Internet Web site, online service
10 including a cloud computing service, online application, or mobile
11 application that is used for K-12 purposes and was designed and
12 marketed for K-12 purposes.

13 "Student" means any individual who is or has been enrolled in a
14 public school or nonpublic school.

15 "Targeted advertising" means presenting advertisements to a
16 student or the student's parent or guardian, where the
17 advertisements are selected based on information obtained or
18 inferred from the student's online behavior or use of online
19 applications or mobile applications or from covered information
20 about the student maintained by the operator of a school service.
21 "Targeted advertising" shall not include presenting advertisements
22 to a student or the student's parent or guardian at an online location
23 or through an online application or mobile application, if: the
24 advertisements are contextually relevant; the advertisements are
25 selected based on a single visit or session of use during which the
26 advertisements are presented; and information about the student's
27 online behavior or use of online applications or mobile applications
28 is not collected or retained over time.

29

30 3. An operator shall not knowingly:

31 a. engage in or permit targeted advertising on a school service;
32 b. collect, generate, use, or disclose any covered information
33 for purposes of targeted advertising;
34 c. sell covered information to a third party;
35 d. collect, generate, or use covered information, including
36 using covered information to create a personal profile of a student,
37 other than for K-12 purposes; or

38 e. disclose covered information, unless the disclosure is made:

39 (1) pursuant to lawful process or to ensure legal and regulatory
40 compliance with federal or State law;

41 (2) in accordance with section 5 of this act, pursuant to a request
42 for disclosure. In the case of information about a student, the
43 request for disclosure shall be from the student's parent or guardian
44 and in the case of information about a student's parent or guardian
45 or another user of the school service, the request for disclosure shall
46 be from the parent or guardian or the other user, as the case may be;

47 (3) in accordance with section 5 of this act, pursuant to a request
48 for disclosure from a student who is or has been enrolled in a high

1 school or from the student's parent or guardian for the exclusive
2 purpose of: providing or authenticating the student's transcript,
3 standardized test scores, letters of recommendation, or other
4 information required by an institution of higher education for an
5 application for admission or by a potential employer for an
6 application for employment; or providing information relating to
7 admission to an institution of higher education or a scholarship or
8 financial aid for attendance at an institution of higher education;

9 (4) to protect the safety of users or others, or the security of the
10 school service;

11 (5) to a public or nonpublic school, as permitted by federal and
12 State law; or

13 (6) to a third-party service provider of the operator, and the
14 operator contractually: prohibits the service provider from using
15 any covered information for any purpose other than providing the
16 contracted service to, or on behalf of, the operator; prohibits the
17 service provider from disclosing to subsequent third parties any
18 covered information disclosed by the operator to the service
19 provider; and requires the service provider to establish, implement,
20 and maintain reasonable security procedures in accordance with
21 security practices established pursuant to subsection a. of section 4
22 of this act.

23

24 4. An operator shall:

25 a. establish, implement, and maintain reasonable security
26 procedures appropriate to the nature of covered information to
27 protect the confidentiality, security, and integrity of covered
28 information;

29 b. delete a student's covered information, except for
30 information that is required to be maintained by federal or State
31 law, within a reasonable time, not to exceed 45 days, after receiving
32 a request from a public or nonpublic school serving the student, or a
33 request, either directly or through the public or nonpublic school,
34 from the student's parent or guardian, except in the case of
35 information that is included in a mandated student record or that is
36 directed by the public or nonpublic school to be maintained for
37 educational or administrative purposes;

38 c. disclose publicly and to each public or nonpublic school to
39 which the operator provides a school service, in contracts or privacy
40 policies in a manner that is clear and easy to understand, the types
41 of covered information collected or generated, if any, the purposes
42 for which the covered information is used or disclosed to third
43 parties, and the identity of any such third party;

44 d. facilitate access to and correction of covered information,
45 either directly or through a public or nonpublic school, in the case
46 of information about a student, by the student's parent or guardian,
47 or in the case of information about a parent or guardian or another

- 1 user of the school service, by the parent or guardian or the other
2 user, as the case may be;
- 3 e. implement policies and procedures for responding to data
4 breaches involving unauthorized acquisition of or access to
5 personally identifiable information that occur on a school service, in
6 compliance with any obligations imposed by federal or State law;
- 7 f. notify the Department of Education and, as appropriate,
8 students, parents or guardians, public and nonpublic schools, or
9 personnel of the school, including teachers, of each data breach
10 involving unauthorized acquisition of or access to personally
11 identifiable information that occurs on a school service, in
12 compliance with any obligations imposed by federal or State law;
13 and
- 14 g. delete any covered information maintained by a school
15 service, except for information that is required to be maintained by
16 federal or State law:
- 17 (1) within a reasonable time, not to exceed one year, after the
18 operator ceases to provide the service to the public or nonpublic
19 school, unless the information is required to be maintained at the
20 direction of the public or nonpublic school, or the student's parent
21 or guardian; or
- 22 (2) if the operator continues providing the service in whole or in
23 part to a student after ceasing to provide the service to the public or
24 nonpublic school, within a reasonable time, not to exceed one year,
25 after the operator ceases to provide the service to the student, unless
26 the information is required to be maintained at the direction of the
27 student's parent or guardian.
- 28
- 29 5. a. An operator may disclose covered information under
30 paragraphs (2) and (3) of subsection e. of section 3 of this act only
31 after the operator:
- 32 (1) receives from the requesting party, an affirmative express
33 request, whether made directly or through a public or nonpublic
34 school serving the student, to disclose information specified in the
35 request;
- 36 (2) provides to the requesting party, in a manner that is clear and
37 easy to understand, a description of the types of covered
38 information that will be disclosed to a third party, any fees collected
39 by the operator to cover administrative costs, and the purposes for
40 which the covered information will be disclosed to and used by the
41 third party;
- 42 (3) ensures that the third party agrees, in writing or an electronic
43 equivalent: not to use any covered information received pursuant to
44 the request for any purpose other than fulfilling the purpose for
45 which the request was made; not to disclose to subsequent third
46 parties any covered information received pursuant to the request;
47 and to establish, implement, and maintain reasonable security

1 procedures in accordance with security practices established
2 pursuant to subsection a. of section 4 of this act; and

3 (4) provides a readily available mechanism for the requesting
4 party to revoke the request.

5 b. As used in this section, “requesting party” means the
6 student, the student’s parent or guardian, or other user of the school
7 service.

8

9 6. a. Nothing in this act shall prohibit an operator from:

10 (1) using de-identified and aggregated covered information
11 within the operator’s school service or other sites, services, or
12 applications owned by the operator to improve educational
13 products, or to demonstrate the effectiveness of the operator’s
14 products or services, including in the marketing of the products or
15 services; or

16 (2) disclosing de-identified and aggregated covered information
17 for research and development, including research, development, and
18 improvement of educational sites, services, and applications, and
19 advancements in the science of learning.

20 b. If an operator uses or discloses covered information as
21 described in subsection a. of this section, the operator shall take
22 reasonable steps to ensure that the information cannot be
23 manipulated in a manner that would enable identification of an
24 individual to whom the information relates, or disaggregation of
25 aggregated information into its component parts.

26

27 7. The prohibitions of this act on the sale and disclosure of
28 covered information shall not apply to the merger of an operator
29 with another entity or the acquisition of the operator by another
30 entity, including any subsequent merger or acquisition, provided
31 that the operator or successor entity continues to be subject to the
32 provisions of this act with respect to covered information acquired
33 before the merger or acquisition.

34

35 8. This act shall continue to apply, after a student is no longer
36 enrolled in a public or nonpublic school, to covered information
37 relating to the student that was collected or generated while the
38 student was enrolled.

39

40 9. Nothing in this act shall be construed to:

41 a. limit the authority of a law enforcement agency to obtain
42 content or information from an operator as authorized by law or
43 pursuant to an order of a court of competent jurisdiction;

44 b. limit the ability of an operator to use information, including
45 covered information, for adaptive or personalized student learning
46 purposes;

- 1 c. limit a public or nonpublic school from providing Internet
2 access service for its own use, to other public or nonpublic schools,
3 or to students and their families;
- 4 d. prohibit an operator's use of covered information for
5 maintaining, developing, supporting, improving, or diagnosing the
6 operator's school service;
- 7 e. prohibit an operator of a school service from marketing
8 educational products directly to parents or guardians, provided that
9 the marketing does not result from the use of covered information;
- 10 f. impose a duty upon a provider of an electronic store,
11 gateway, marketplace, or other means of purchasing or
12 downloading software or applications to review or enforce
13 compliance with this act by operators of school services;
- 14 g. impede the ability of a student or the student's parent or
15 guardian to download, export, create, or otherwise save or maintain
16 data or documents created by or about the student or
17 noncommercial applications created by the student, except to the
18 extent that this activity would result in disclosures prohibited by
19 this act of covered information of other students or users of a school
20 service; or
- 21 h. prohibit an operator from collecting a reasonable fee to
22 cover the administrative costs of making a disclosure under
23 paragraph (3) of subsection e. of section 3 of this act.

24
25 10. Any provision of this act that refers to the consent of the
26 student's parent or guardian for the use or disclosure of covered
27 information or the right of the student's parent or guardian to access
28 or otherwise obtain, use, correct, request disclosure of, or request
29 deletion of, covered information, shall, in the case of covered
30 information about a student who is 18 years of age or older, be
31 considered to refer to the consent or right of the student and not the
32 student's parent or guardian.

33
34 11. a. The Commissioner of Education shall provide public and
35 nonpublic schools with guidance and technical assistance with
36 respect to preventing and responding to data breaches involving
37 unauthorized acquisition of or access to personally identifiable
38 information that occur on a school service, in compliance with any
39 obligations imposed by federal or State law.

40 b. No later than one year after the effective date of this act and
41 annually thereafter, the commissioner shall submit to the Governor
42 and the Legislature pursuant to section 2 of P.L.1991, c.164
43 (C.52:14-19.1), a report on the number, scope, and nature of the
44 data breaches about which the department receives notice pursuant
45 to subsection f. of section of 4 of this act.

1 • implementing policies and procedures to respond to data
2 breaches, including notifying the Department of Education and, as
3 appropriate, students, parents, and public or nonpublic schools of
4 the breach.

5 The bill requires the Commissioner of Education to provide
6 public and nonpublic schools with guidance and technical assistance
7 with respect to preventing and responding to data breaches
8 involving unauthorized acquisition of or access to students'
9 personally identifiable information. The commissioner is also
10 required to submit a report annually to the Governor and the
11 Legislature on the number, scope, and nature of the data breaches
12 about which the department receives notice from operators in
13 accordance with the bill's provisions.