

P.A. 18-125 AN ACT CONCERNING REVISIONS TO THE STUDENT DATA PRIVACY ACT

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(Background Information for Policy Review Committee)

This Act makes numerous changes in the student data privacy law. The law restricts how website, online service, and mobile application (i.e., “online service”) operators and consultants who contract with boards of education process and access student data. The law requires operators and consultants to use reasonable security practices to safeguard student data.

The Act requires the Commission for Educational Technology (CET) to develop a student data privacy terms-of-service agreement addendum that may be used in contracts entered into pursuant to the student data privacy law.

With respect to the privacy law, the legislation:

1. creates certain exceptions for contractors and operators from requirements for deleting student data at a board of education’s, student’s, parents’, or guardians’ request;
2. creates an exception, under certain conditions, for boards when they have special education students using a particular online service that is necessary, but unable to meet the contract requirements;
3. eliminates a requirement that boards electronically notify students and parents of new contracts;
4. requires the State Department of Education (SDE) to add more information to the guidance it must already provide school districts;
5. requires boards of education to annually report to CET on using any online service that does not operate under a contract as required by the law and the Act; and
6. adds the Connecticut Association of Schools’ executive director, or his/her designee, as a member of the student data privacy task force.

The effective date of this legislation is July 1, 2018, except the provisions regarding the agreement addendum and the task force member are effective upon passage.

The new legislation does not change the definitions of contractor, operator or consultant, as used in the current policy sample.

The specific revisions contained in this legislation follow.

Sections 1 & 2 – Terms-of-Service Agreement Addendum

CET is required to develop a uniform student data privacy terms-of-service agreement addendum that may be used in contracts entered into pursuant to the privacy law. The addendum must conform to the requirements for a contract described in the law. CET must make the addendum available on its website or in an online registry it maintains for boards, contractors, and operators. It also authorizes boards of education and a contractor to include the addendum in any contract executed under this law to satisfy the law’s requirements.

Section 2 – Special Education Student Exception

The Act exempts, under certain circumstances, a board of education from the requirement to enter into a contract that conforms with the privacy law’s standards for students (1) receiving special education services or (2) who have an accommodation under the Rehabilitation Act of 1973 (commonly referred to as a Section 504 accommodation).

Under this legislation, this exemption only applies if the:

1. online service (a) is unique and necessary to implement the student’s individualized education program (IEP) or Section 504 plan, (b) is unable to meet the law’s contract requirements, and (c) complies with the federal Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA);
2. board can provide evidence it has made a reasonable effort to (a) enter into a contract with the online service and (b) find an equivalent online service that complies with the law; and
3. parent or legal guardian of the student, and, in the case of a student with an IEP, a member of the IEP planning and placement team, sign an agreement that (a) acknowledges that they are aware that the online service is unable to comply with the law and (b) authorizes the use of the service.

If such an exception is made, the online service must still comply with the security measures in the law, such as the data security and information deletion provisions and the general prohibition on disclosing, selling, or trading student information.

Under the Act, if a parent or legal guardian of a student requests the evidence of reasonable attempts to get the online service to agree to a contract or to find an equivalent service, the board must provide it.

Sections 2 & 3 – Deleting Student Data

Current law requires an operator or contractor to delete student records, student information, and student-generated content (“student information”) in certain situations. It requires an operator to delete any student information, within a reasonable amount of time if a student, parent, legal guardian of a student, or board of education who has the right to control the student information requests its deletion.

This legislation creates an exception to this requirement when (1) state or federal law prohibits the deletion or requires retention of the information or (2) a copy of the student information is part of a disaster recovery storage system and is generally inaccessible to the public and the operator, provided a student, parent, or legal guardian or board of education may request it to be deleted if the operator uses it to repopulate accessible data after a disaster recovery.p

The Act also adds this exception to the provisions on student information deletion that must be in any contract between a board of education and a contractor.

Section 2 – Posting Contract Information

Current law requires boards of education to electronically notify affected students and their parents or guardians within five business days after entering into a contract with a contractor. The notice must (1) state that the contract has been executed and its date of execution; (2) provide a brief description of the contract and its purpose; and (3) state what student information may be collected under the contract. The legislation removes the requirement to electronically notify students and parents. The law, unchanged by this Act, requires Boards remain required to post the notice and contract on their websites. This legislation requires boards each year by September 1, to electronically notify parents, guardians, and students of the website's address.

Section 2 – Exception for Retaining Information

Current law requires contracts for online services to include a statement that student information will not be kept by, or available to, the contractor after the contracted services are completed unless a student, parent, or guardian chooses to establish or maintain an account with the contractor. The Act specifies that the information will not be retained after the contract expires, rather than after the services are completed, and that the choice to establish or maintain an account takes place after the contract expires.

Section 4 – Guidance for School Districts

Existing law requires CET to provide guidance to boards on FERPA and the state privacy law. The bill requires SDE to add information on the terms-of-service agreement addendum to this guidance. It also requires SDE to consult with CET in providing the written guidance, which must include:

1. a plain language explanation of how FERPA and the state student data privacy law are to be implemented,
2. information about the terms-of-service agreement addendum, and
3. how the addendum can be incorporated into contracts executed under the state privacy law.

Section 5 – Student Data Privacy Task Force

By law, there is a task force to study student data privacy issues. The Act adds the Connecticut Association of Schools' executive director, or designee, as a member.

Section 6 – Reporting Requirement

The Act requires, every year beginning with the school year starting July 1, 2018, each board of education to submit a report to CET concerning the use of online services that do not have a contract that meets the standards required under the law and the Act. The report must indicate whether or not any of these online services are being so used, and, if so, a list of them.

The policy has been revised to reflect this legislation and follows.

July 2018

A policy to consider.

Business and Non-Instructional Operations

Data-Based Information and Management Systems

Student Data Protection and Privacy/Cloud-Based Issues

The Board of Education (Board) may, pursuant to this policy, enter into a contract with a third party for either or both of the following purposes:

1. To provide services, including Cloud-based services, for the digital storage, management, and retrieval of student records.
2. To provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use student records in accordance with the contractual provisions listed below.

The Board when entering into a contract with a contractor for purposes listed above, shall ensure the contract includes, but is not limited to the following:

1. A statement that student records, student information and student generated content continues to be the property of and under the control of the Board. (They are not the property of, or under the control of a software or electronic service contractor.)
2. A description of the means by which the Board may request the deletion of any student information, student records or student-generated content in the possession of the contractor that is not (a) otherwise prohibited from deletion or required to be retained under state or federal law, or (b) stored as a copy of a disaster recovery storage system and that is (i) inaccessible to the public, and (ii) unable to be used in the normal course of business by the contractor, provided the Board of Education may request the deletion of any such student information, student records or student-generated content if such copy has been used by the operator to repopulate data following a disaster recovery.
3. A statement that the contractor will not use student information, student records, or student-generated content for any purposes except those the contract authorizes.
4. A description of the procedures by which a student, parent or legal guardian, of a student may review personally identifiable information (PII) contained in the student's record, student information or student-generated content and correct erroneous information, if any in such student material.
5. A statement that the contractor shall take actions designed to ensure the security and confidentiality of student records, student information, and student-generated content.

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Data-Based Information and Management Systems

Student Data Protection and Privacy/Cloud-Based Issues (continued)

6. A description of the procedures that a contractor will follow for notifying the Board, in compliance with C.G.S. 10-234dd when there has been an unauthorized release, disclosure or acquisition of student information, student records or student-generated content.
7. A statement that a student's records, student information, or student-generated content shall not be retained or available to the contractor upon expiration of the contract between the contractor and the Board of Education except a student, parent or legal guardian of a student may choose to independently establish or maintain an electronic account with the contractor after the expiration of such contract for the purpose of storing student-generated content. (e.g., essays, research papers, portfolios, creative writing, music, audio files, or photographs, but not standardized assessment responses.)
8. A statement that the contractor and the Board shall ensure compliance with the federal Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g.
9. A statement that Connecticut laws shall govern the rights and duties of all parties to the contract, (contractor and the Board).
10. A statement that if any provision of the contract or the application of the contract is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the contract which can be given effect without the invalid provision or application.
11. A prohibition against the contractor using personally identifiable information contained in student records to engage in advertising or for any other purposes other than those authorized pursuant to the contract.

The Board of Education may use the uniform student data privacy terms-of-service agreement addendum, developed by the Commission for Educational Technology (CET), in contracts entered into pursuant to C.G.S. 10-234bb. Such amendment shall conform to the requirements for a contract listed above.

Any provision of a contract or the terms-of-service agreement addendum entered into between a contractor and the Board on or after July 1, 2018, that conflicts with the provisions listed above shall be void. Moreover, a contract is void if it lacks any of the above provisions. The Board will give the contractor reasonable notice to amend the contract or the terms-of-service agreement addendum to include the missing provisions.

Business and Non-Instructional Operations

Data-Based Information and Management Systems

Student Data Protection and Privacy/Cloud-Based Issues (continued)

Any contract entered into on and after July 1, 2018, or the terms-of-service agreement addendum that does not include the provisions listed above shall be void, provided the Board has given reasonable notice to the contractor and the contractor has failed within a reasonable time to amend the contract or the terms-of-service agreement addendum to include the required provisions.

The Board of Education shall maintain and update, as necessary, a website with information relating to all contracts entered into pursuant to this policy. Not later than five business days after executing a contract pursuant to this policy the Board shall post notice of such contract on the Board's website. The notice shall include the contract and (1) state that the contract has been executed and the date that such contract was executed, (2) provide a brief description of the contract and the purpose of the contract, and (3) state what student information, student records or student-generated content may be collected as a result of the contract.

On or before September 1st annually, the Board of Education shall electronically notify students and the parents/guardians of students of the address of the Internet website described in this policy.

The Board of Education and a contractor may include in any contract executed pursuant to this policy, the uniform student data privacy terms-of-service agreement addendum, previously described, to satisfy the requirements of this policy.

The Board of Education is not required to enter into a contract pursuant to this policy if the use of an Internet website, online service or mobile application operated by a consultant or an operator is unique and necessary to implement a child's individualized education program or plan pursuant to Section 504 of the Rehabilitation Act of 1973, as amended from time to time, and such Internet website, online service or mobile application is unable to comply with the provisions of this policy, provided (1) such Internet website, online service or mobile application complies with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time, and the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended from time to time, (2) the Board of Education can provide evidence that it has made a reasonable effort to (A) enter into a contract with such consultant or operator to use such Internet website, online service or mobile application, and (B) find an equivalent Internet website, online service or mobile application operated by a consultant or an operator that complies with the provisions of this section, (3) the consultant or operator complies with the provisions of section 10-234cc, as amended for such use, and (4) the parent/legal guardian of such child, and, in the case of a child with an individualized education program, a member of the planning and placement team, sign an agreement that (A) acknowledges such parent/legal guardian is aware that such Internet website, online service or mobile application is unable to comply with the provisions of this policy, and (B) authorizes the use of such Internet website, online service or mobile application. The Board of Education shall, upon the request of a child's parent/legal guardian, provide the evidence described above to such parent/legal guardian.

Business and Non-Instructional Operations

Data-Based Information and Management Systems

Student Data Protection and Privacy/Cloud-Based Issues (continued)

The Board expects that an operator shall implement and maintain security procedures and practices that meet or exceed industry standards and that are designed to protect student information, student records, and student-generated content from unauthorized access, destruction use, modification and disclosure; and delete any student information, student records or student-generated content within a reasonable amount of time if a student, parent/guardian or Board requests deletion of such student information, student records or student generated content unless:

1. state or federal law prohibits such deletion or otherwise requires the retention of such student information, student records or student-generated content, or
2. a copy of such student information, student records or student-generated content is in the possession of the operator as part of a disaster recovery storage system and is inaccessible to the public and unable to be used in the normal course of business by the operator, provided such student, parent/legal guardian of a student or the Board may request the deletion of any such student information, student records or student-generated content if such copy is used by the operator to repopulate accessible data following a disaster recovery.

The Board will utilize the written guidance developed by the Department of Education in consultation with the Commission for Educational Technology concerning the implementation of FERPA and the laws relating to student data privacy. Such written guidance includes, a plain language explanation of how such student data privacy laws are to be implemented, information about the uniform student data privacy terms-of-service agreement addendum, and (3) how such addendum may be incorporated into contracts executed pursuant to section 10-234bb, as amended.

Notice of Breach of Security/Data Breaches

Upon notice of a breach of security by a contractor, the Board shall, not later than two business days after receipt of such notice, notify the students and the parents/legal guardians of the students whose student information, student records, or student-generated content was involved in such breach. The Board shall also, as required, post notice of the breach on its website.

Upon the discovery of a breach of security that results in the unauthorized release of student information, excluding directory information, the contract shall contain the provision that the contractor must notify the Board of such breach without unreasonable delay, and in no case later than thirty (30) days from the discovery of the breach.

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Data-Based Information and Management Systems

Student Data Protection and Privacy/Cloud-Based Issues

Notice of Breach of Security/Data Breaches (continued)

Upon the discovery of a breach of security that results in the unauthorized release of directory information, student records, or student-generated content, the contract shall contain the provision that the contractor must notify the Board without unreasonable delay and in no case later than sixty (60) days from the discovery of the breach.

Note: The Board may desire to contract for more prompt notice of a breach of security.

Definitions

1. **“Contractor”** means an operator or consultant that is in possession of or has access to student information, student records or student-generated content as a result of a contract with a local or regional Board of Education.
2. **“Operator”** means the operator of an Internet website, online service, online application, (app) or mobile application with actual knowledge that such Internet website, service, or mobile application is used primarily for school purposes and was designed and marketed for school purposes and who collects, maintains or uses student information.
3. **“Consultant”** means a professional who provides non-instructional services, including administrative, planning, analytical, statistical, or research services to a board of education under a contract.
4. **“Student”** means a Connecticut resident enrolled in a preschool program participating in the state-wide public school information system, pursuant to section 10-10a of the general statutes, or enrolled in grades K to 12, inclusive, in a public school, or receiving special education and related services under an individualized education program, or otherwise the responsibility of the Board.
5. **“Deidentified information”** means any information that has been altered to prevent the identification of an individual student.
6. **“Eligible student”** means a student who has reached 18 years of age.

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Student Data Protection and Privacy/Cloud-Based Issues

Definitions (continued)

7. **“Student-generated content”** means materials created by a student, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, or photographs. “Student-generated content” does not include student responses to a standardized assessment.
8. **“Student records”** means any information directly related to a student that is maintained by the school district, the State Board of Education or the Department of Education or any information acquired from a student through the use of educational software assigned to the student by a teacher or other district employee.

“Student records” does not mean any of the following:
 - a. Deidentified information, allowed under the contract to be used by the contractor to improve educational products for adaptive learning purposes and for customizing student learning.
 - b. Deidentified information, used to demonstrate the effectiveness of the contractor’s products in the marketing of such products.
 - c. Deidentified information, used for the development and improvement of the contractor’s products and services.
9. **“Online service”** includes Cloud computing services, which must comply with this policy if they otherwise meet the definition of an operator.
10. **“Student information”** is personally identifiable information regarding a student that in any media or format that is not publicly available that meets any of the following:
 - a. Is created or provided by a student, or the student’s parent or legal guardian, by using an operators’ website, online service, or mobile application (app) for school purposes.
 - b. Is created or provided by an employee or agent of the board of education, to an operator for school purposes.
 - c. Is gathered by an operator through the operation of the operator’s Internet website, online service, or mobile application (app) and identifies a student including but not limited to information in the student’s educational record or email account, first and last name, home address, telephone number, date of birth, email address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or behavioral assessments.

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Student Data Protection and Privacy/Cloud-Based Issues

Definitions (continued)

11. **“School purposes”** means purposes that customarily take place at the direction of a teacher, or a board of education or aid in the administration of school activities, including, but not limited to, instruction in the classroom, administrative activities, and collaboration among students, school personnel, or parents/legal guardians.
12. **“Targeted advertising”** means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student-generated content or inferred from the usage of the operator’s Internet website, online service or mobile application by such student. It does not include any advertising to a student on a website that the student accesses at the time or in response to a student’s response or request for information or feedback.

The Board, through this policy, places restrictions on an “operator” as defined in this policy. An operator shall not knowingly engage in any of the following activities with respect to their internet website, online service or mobile application:

1. Engage in targeted advertising on the operator’s site, service, or application, or on any other Internet website, online service or mobile application;
2. Use student information to create a profile of a student for purposes other than the furtherance of school purposes;
3. Sell student information, unless the sale is part of the purchase, merger, or acquisition of an operator by a successor operator and the operator and the successor operator continue to be subject to the provisions of this policy regarding student information; or
4. Disclose student information, unless the disclosure is made (a) in furtherance of school purposes of the Internet website, online service or mobile application, provided the recipient of the student information uses such student information to improve the operability and functionality of the Internet website, online service or mobile application and complies with this policy; (b) to ensure compliance with federal or state law; (c) in response to a judicial order; (d) to protect the safety of users or others, or the security of the Internet website, online service or mobile application; or (e) to an entity hired by the operator to provide services for the operator’s Internet website, online service or mobile application, provided the operator contractually (i) prohibits the entity from using student information for any purpose other than providing the contracted service to, or on behalf of, the operator, (ii) prohibits the entity from disclosing student information provided by the operator to subsequent third parties, and (iii) requires the entity to comply with this policy.

Business and Non-Instructional Operations

Data-Based Information and Management Systems

Student Data Protection and Privacy/Cloud-based Issues (continued)

The Board recognizes that an operator may:

1. Use student information (1) to maintain, support, evaluate or diagnose the operator's Internet website, online service or mobile application (app), or (2) for adaptive learning purposes or customized student learning.
2. Use de-identified student information (1) to develop or improve the operator's Internet website, online service or mobile application (app), or other Internet websites, online services or mobile applications owned by the operator, or (2) to demonstrate or market the effectiveness of the operator's Internet website, online service or mobile application.
3. Share aggregated de-identified student information for the improvement and development of Internet websites, online services or mobile applications designed for school purposes.

Nothing in this policy shall be construed to:

1. limit the ability of a law enforcement agency to obtain student information from an operator as authorized by law or pursuant to a court order;
2. limit the ability of a student or the parent or legal guardian of a student to download, transfer or otherwise save or maintain student information;
3. impose a duty upon a provider of an interactive computer service, as defined in 47 USC 230, as amended from time to time, to ensure compliance with this section by third-party information content providers, as defined in 47 USC 230, as amended from time to time;
4. impose a duty upon a seller or provider of online services or mobile applications to ensure compliance with this policy with regard to such online services or mobile applications;
5. limit an Internet service provider from providing a student, parent or legal guardian of a student or local or regional Board of Education with the ability to connect to the Internet;
6. prohibit an operator from advertising other Internet websites, online services or mobile applications that are used for school purposes to parents or legal guardians of students, provided such advertising does not result from the operator's use of student information;
7. apply to Internet websites, online services or mobile applications that are designed and marketed for use by individuals generally, even if the account credentials created for an operator's Internet website, online service or mobile application may be used to access Internet websites, online services or mobile applications that are designed and marketed for school purposes.

Business and Non-Instructional Operations

Data-Based Information and Management Systems

Student Data Protection and Privacy/Cloud-based Issues (continued)

The Board, upon determination that a request for directory information is related to school purposes, may disclose directory information to any person requesting such directory information. If the Board determines that a request for directory information is not related to school purposes, the Board shall not disclose such directory information.

(cf. 3520.1 – Information Security Breach and Notification)

(cf. 3520.11 – Electronic Information Security)

(cf. 3520.12 – Data-Based Information Management System Confidentiality Policy)

(cf. 5125 – Student Records)

(cf. 5145.15 – Directory Information)

(cf. 6162.51 – Surveys of Students/Student Privacy)

Legal Reference: Connecticut General Statutes
1-19(b)(11) Access to public records. Exempt records.
7-109 Destruction of documents.
10-15b Access of parent or guardians to student’s records.
10-209 Records not to be public.
10-234aa Definitions
10-234bb Contracts between boards of education and contractors re student data. Requirements. (as amended by PA 18-125)
10-234cc Requirements for operators re student data
10-234dd Duties re unauthorized release, disclosure or acquisition of student data (as amended by PA 18-125)
11-8a Retention, destruction and transfer of documents
11-8b Transfer or disposal of public records. State Library Board to adopt regulations.
46b-56(e) Access to Records of Minors.
Connecticut Public Records Administration Schedule V - Disposition of Education Records (Revised 1983).
P.A. 16-189 An Act Concerning Student Privacy
PA 17-200 An Act Making Revisions to the Student Data Privacy Act of 2016
PA 18-125 An Act Concerning Revisions to the Student Data Privacy Act
Federal Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended, added by section 513 of P.L. 93-568, codified at 20 U.S.C.1232g).

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Legal Reference: (continued)

Dept. of Educ, 34 C.F.R. Part 99 (May 9, 1980 45 FR 30802) regs. implementing FERPA enacted as part of 438 of General Educ. Provisions Act (20 U.S.C. 1232g) parent and student privacy and other rights with respect to educational records, as amended 11/21/96.

Protection of Pupil Rights Amendment (PPRA) 20 U.S.C. § 1232g (2014)

Children's Online Privacy Protection Act (COPPA) 15 U.S.C. §§6501 *et seq.* (2014)

Policy adopted:

cps 6/16
rev 9/16
rev 7/17
rev 6/18

_____ PUBLIC SCHOOLS
_____, Connecticut

STAFF REQUEST FOR APPROVAL OF TECHNOLOGY RESOURCES

Before use in the classroom, use with students, or administrative use, all online learning resources, online applications, digital subscription services, and other programs or technology applications requiring the user to accept terms of services or a user agreement must be approved by the _____ (*Technology Coordinator/Principal*)

To request to use such an online resource or technology application other than a District-approved resource, please complete and submit the following form.

Name: _____
Position: _____ (*example: teacher*)
Date: _____

If the resource will be used by students, which grade(s)?: _____

1. Give name and description of the technology resource you are requesting to use. If you are requesting an online resource, please include a link to the resource.

2. Describe how you plan to use the requested resource. What information, if any, will be shared? Who will have access to the resource? If for use by students, will students need to sign up for an account or download an application? Is parental permission required by the application before use by a student?

For Office Use Only

Approved for use

Additional parental notification and permission required.

No additional notifications or permissions required.

Not approved for use at this time

Reason: _____