



Substitute House Bill No. 5444

Public Act No. 18-125

AN ACT CONCERNING REVISIONS TO THE STUDENT DATA PRIVACY ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) The Commission for Educational Technology shall develop a uniform student data privacy terms-of-service agreement addendum that may be used in contracts entered into pursuant to section 10-234bb of the general statutes, as amended by this act. The provisions of such addendum shall conform to the requirements for a contract described in said section. The commission shall make such addendum available on its Internet web site, or in any online registry maintained by the commission for contractors and operators, as those terms are defined in section 10-234aa of the general statutes, and local and regional boards of education.

Sec. 2. Section 10-234bb of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(a) On and after July 1, 2018, a local or regional board of education shall enter into a written contract with a contractor any time such local or regional board of education shares or provides access to student

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information, student records or student-generated content with such contractor. Each such contract shall include, but need not be limited to, the following:

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

(2) A description of the means by which the local or regional board of education 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 as part 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 such local or regional 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 accessible data following a disaster recovery;

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

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

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

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(6) A description of the procedures that a contractor will follow to notify the local or regional board of education, in accordance with the provisions of section 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 student information, student records or student-generated content shall not be retained or available to the contractor upon [completion] expiration of the [contracted services unless] contract between the contractor and a local or regional board of education, except a student, parent or legal guardian of a student [chooses] 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;

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

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

(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 or applications of the contract which can be given effect without the invalid provision or application.

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

(c) A contractor shall implement and maintain security procedures and practices designed to protect student information, student records and student-generated content from unauthorized access, destruction,

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use, modification or disclosure that, based on the sensitivity of the data and the risk from unauthorized access, (1) use technologies and methodologies that are consistent with the guidance issued pursuant to section 13402(h)(2) of Public Law 111-5, as amended from time to time, (2) maintain technical safeguards as it relates to the possession of student records in a manner consistent with the provisions of 45 CFR 164.312, as amended from time to time, and (3) otherwise meet or exceed industry standards.

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

(e) Any provision of a contract entered into between a contractor and a local or regional board of education on or after July 1, 2018, that conflicts with any provision of this section shall be void.

(f) Any contract entered into on and after July 1, 2018, that does not include (1) a provision required by subsection (a) of this section, or (2) the terms-of-service agreement addendum described in section 1 of this act, shall be void, provided the local or regional board of education has given reasonable notice to the contractor and the contractor has failed within a reasonable time to amend the contract to include the provision required by subsection (a) of this section or the terms-of-service agreement addendum.

(g) (1) Each local and regional board of education shall maintain and update, as necessary, an Internet web site with information relating to all contracts entered into pursuant to this section. Not later than five business days after executing a contract pursuant to this section, a local or regional board of education shall [provide electronic notice to any student and the parent or legal guardian of a student affected by the

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contract] post notice of such contract on the board's Internet web site. The notice shall [(1)] include the contract and (A) state that the contract has been executed and the date that such contract was executed, [(2)] (B) provide a brief description of the contract and the purpose of the contract, and [(3)] (C) state what student information, student records or student-generated content may be collected as a result of the contract. [The local or regional board of education shall post such notice and the contract on the board's Internet web site.]

(2) On or before September first of each school year, the board of education shall electronically notify students and the parents or legal guardians of students of the address of the Internet web site described in this subsection.

(h) A local or regional board of education and a contractor may include in any contract executed pursuant to this section, the uniform student data privacy terms-of-service agreement addendum, described in section 1 of this act, to satisfy the requirements of this section.

(i) A local or regional board of education shall not be required to enter into a contract pursuant to this section if the use of an Internet web site, 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 web site, online service or mobile application is unable to comply with the provisions of this section, provided (1) such Internet web site, 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) such 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 web site, online service or

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mobile application, and (B) find an equivalent Internet web site, 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 by this act, for such use, and (4) the parent or 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 or legal guardian is aware that such Internet web site, online service or mobile application is unable to comply with the provisions of this section, and (B) authorizes the use of such Internet web site, online service or mobile application. A local or regional board of education shall, upon the request of a parent or legal guardian of a child, provide the evidence described in subdivision (2) of this subsection to such parent or legal guardian.

Sec. 3. Section 10-234cc of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(a) An operator shall (1) 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 or disclosure, and (2) delete any student information, student records or student-generated content within a reasonable amount of time if a student, parent or legal guardian of a student or local or regional board of education who has the right to control such student information requests the deletion of such student information, student records or student-generated content, unless (A) state or federal law prohibits such deletion or otherwise requires the retention of such student information, student records or student-generated content, or (B) a copy of such student information, student records or student-generated content is in the possession of the operator as part

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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 or legal guardian of a student or local or regional board of education may request the deletion of any such student information, student records or student-generated content described in this subparagraph if such copy is used by the operator to repopulate accessible data following a disaster recovery.

(b) An operator shall not knowingly:

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

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

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

(4) Disclose student information, student records or student-generated content unless the disclosure is made (A) in furtherance of school purposes of the Internet web site, 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 web site, online service or mobile application and

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complies with subsection (a) of this section; (B) to ensure compliance with federal or state law or regulations or pursuant to a court order; (C) in response to a judicial order; (D) to protect the safety or integrity of users or others, or the security of the Internet web site, online service or mobile application; (E) to an entity hired by the operator to provide services for the operator's Internet web site, online service or mobile application, provided the operator contractually (i) prohibits the entity from using student information, student records or student-generated content for any purpose other than providing the contracted service to, or on behalf of, the operator, (ii) prohibits the entity from disclosing student information, student records or student-generated content provided by the operator to subsequent third parties, and (iii) requires the entity to comply with subsection (a) of this section; or (F) for a school purpose or other educational or employment purpose requested by a student or the parent or legal guardian of a student, provided such student information is not used or disclosed for any other purpose.

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

(d) An operator may use de-identified student information or aggregated student information (1) to develop or improve the operator's Internet web site, online service or mobile application, or

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other Internet web sites, online services or mobile applications owned by the operator, or (2) to demonstrate or market the effectiveness of the operator's Internet web site, online service or mobile application.

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

(f) Nothing in this section shall be construed to (1) limit the ability of a law enforcement agency to obtain student information, student records or student-generated content 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, export, transfer or otherwise save or maintain student information, student records or student-generated content, (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 an electronic store, gateway, marketplace or other means of purchasing or downloading software applications to review or enforce compliance with this section on such software 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 web sites, 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, student records or student-generated content, or (7) apply to Internet web sites, online services or mobile applications that are designed and marketed for use by individuals generally, even if the account credentials created for an

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

Sec. 4. Section 10-234ee of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

The Department of Education, in consultation with the Commission for Educational Technology, shall provide written guidance to local and regional boards of education concerning the implementation of the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time, and the [provisions of] laws relating to student data privacy, set forth in sections 10-234aa to 10-234dd, inclusive, and section 1 of this act. Such written guidance shall include, but need not be limited to, (1) a plain language explanation of how such student data privacy laws are to be implemented, (2) information about the uniform student data privacy terms-of-service agreement addendum, described in section 1 of this act, and (3) how such addendum may be incorporated into contracts executed pursuant to section 10-234bb, as amended by this act.

Sec. 5. Section 5 of public act 16-189, as amended by section 4 of public act 17-200, is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There is established a task force to study issues relating to student data privacy. Such study shall include, but not be limited to, an examination of (1) when a parent or guardian of a student may reasonably or appropriately request the deletion of student information, student records or student-generated content that is in the possession of a contractor or operator, (2) means of providing notice to parents and guardians of students when a student uses an Internet web site, online service or mobile application of an operator for

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instructional purposes in a classroom or as part of an assignment by a teacher, (3) reasonable penalties for violations of the provisions of sections 10-234bb to 10-234dd, inclusive, of the general statutes, as amended by this act, such as restricting a contractor or operator from accessing or collecting student information, student records or student-generated content, (4) strategies in effect in other states that ensure that school employees, contractors and operators are trained in data security handling, compliance and best practices, (5) the feasibility of developing a school district-wide list of approved Internet web sites, online services and mobile applications, (6) the use of an administrative hearing process designed to provide legal recourse to students and parents and guardians of students aggrieved by any violation of sections 10-234bb to 10-234dd, inclusive, of the general statutes, as amended by this act, (7) the feasibility of creating an inventory of student information, student records and student-generated content currently collected pursuant to state and federal law, (8) the feasibility of developing a tool kit for use by local and regional boards of education to (A) improve student data contracting practices and compliance, including a state-wide template for use by districts, (B) increase school employee awareness of student data security best practices, including model training components, (C) develop district-wide lists of approved software applications and Internet web sites, and (D) increase the availability and accessibility of information on student data privacy for parents and guardians of students and educators, and (9) any other issue involving student data security that the task force deems relevant.

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

(1) Two appointed by the speaker of the House of Representatives, one of whom is an operator, [pursuant to] as defined in section 10-234aa of the general statutes and one of whom is an expert in information technology systems;

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(2) Two appointed by the president pro tempore of the Senate, one of whom is a representative or member of the Connecticut Education Association and one of whom is an attorney with expertise in Connecticut school law;

(3) Two appointed by the majority leader of the House of Representatives, one of whom is a representative of a contractor, [pursuant to] as defined in section 10-234aa of the general statutes and one of whom is an expert in information technology systems;

(4) Two appointed by the majority leader of the Senate, one of whom is a representative or member of the Connecticut Parent Teacher Association and one of whom is a representative or member of the American Federation of Teachers;

(5) Two appointed by the minority leader of the House of Representatives, one of whom is a student privacy advocate and one of whom is a representative or member of the Connecticut Association of Boards of Education;

(6) Two appointed by the minority leader of the Senate, one of whom is a representative of the Connecticut Association of School Administrators and one of whom is a representative or member of the Connecticut Association of Public School Superintendents;

(7) The Attorney General, or the Attorney General's designee; [and]

(8) The Commissioner of Education, or the commissioner's designee; [.] and

(9) The executive director of the Connecticut Association of Schools, or the executive director's designee.

(c) All appointments to the task force shall be made not later than thirty days after the effective date of this section. Any vacancy shall be

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filled by the appointing authority.

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

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

(f) Not later than January 1, [2018] 2019, the task force shall submit a report on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to general law and education, in accordance with the provisions of section 11-4a of the general statutes. The task force shall terminate on the date that it submits such report or January 1, [2018] 2019, whichever is later.

Sec. 6. (NEW) (*Effective July 1, 2018*) For the school year commencing July 1, 2018, and each school year thereafter, each local or regional board of education shall annually submit a report to the Commission for Educational Technology concerning the use of Internet web sites, online services or mobile applications without a contract pursuant to subsection (i) of section 10-234bb of the general statutes, as amended by this act. Such report shall indicate whether or not any such Internet web sites, online services or mobile applications are being so used, and, if so, a list of all such Internet web sites, online services or mobile applications.

Approved June 7, 2018