



ARIZONA STATE SENATE
Fifty-Third Legislature, First Regular Session

FINAL AMENDED
FACT SHEET FOR S.B. 1314

schools; student data privacy

Purpose

Establishes prohibitions and requirements for third parties concerning the use, protection and disclosure of student data.

Background

The Family Educational Rights and Privacy Act (FERPA) is a federal law enacted in 1974 that addresses the privacy of student education records. Under the law, parents have certain rights to their children's education records and these rights transfer to the student when he or she reaches 18 years of age or attends a school beyond high school. Parents or eligible students have the right to inspect and review the student's education records maintained by the school and may request that a school correct records that the parent or eligible student believes to be inaccurate or misleading.

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions: 1) school officials with legitimate educational interest; 2) other schools to which a student is transferring; 3) specified officials for audit or evaluation purposes; 4) appropriate parties in connection with financial aid to a student; 5) organizations conducting certain studies for or on behalf of the school; 6) accrediting organizations; 7) to comply with a judicial order or lawfully issued subpoena; 8) appropriate officials in cases of health and safety emergencies; and 9) state and local authorities, within a juvenile justice system (34 Code of Federal Regulations § 99.31).

The Children's Online Privacy Protection Act requires operators of sites and services that knowingly collect, use or disclose personally identifiable information about children under 13 years of age online obtain parental consent.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Prohibits an operator from knowingly doing any of the following:
 - a) engaging in targeted advertising on the operator's site, service or application or any other site, service or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has

- acquired because of the use of that operator's site, service or application for school purposes;
- b) using information, including persistent unique identifiers, created or gathered by the operator's site, service or application to amass a profile about a student except in furtherance of school purposes. Specifies this does not apply to the collection and retention of account information that remains under the control of the student, the student's parent or guardian or the public school; and
 - c) selling or renting a student's information, including covered information. Specifies this does not apply to the purchase, merger or other type of acquisition of an operator by another entity if the operator or successor entity complies with this section regarding previously acquired student information, or to national assessment providers if the provider secures the express written consent of the student's parent or guardian or the student that is given in response to a clear and conspicuous notice, solely to provide access to employment, educational scholarships or financial aid or postsecondary educational opportunities.
2. Prohibits an operator from knowingly disclosing or using covered information unless the disclosure or use is made for any of the following purposes:
- a) in furtherance of the school purpose of the site, service or application if the recipient of the disclosed covered information does not further disclose the information except to allow or improve operability and functionality of the operator's site, service or application;
 - b) to ensure legal and regulatory compliance or protect against liability;
 - c) to respond to or participate in the judicial process;
 - d) to protect the safety or integrity of users of the site, service or application or others or the security of the site, service or application;
 - e) for a school, educational or employment purpose requested by the student or the student's parent or guardian if the information is not used or further disclosed for any other purpose; and
 - f) to a third party if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.
3. Directs operators to do the following:
- a) implement and maintain reasonable security procedures and practices that are appropriate to the nature of the covered information and that are designed to protect that covered information from unauthorized access, destruction, use, modification or disclosure;
 - b) delete, within a reasonable time period, a student's covered information if the public school requests deletion of covered information under the control of the public school, unless the student or the student's parent or guardian consents to the maintenance of the covered information; and
 - c) provide prominent notice before making material changes to its privacy policies.

4. Directs local education agencies to adopt policies regarding the use of technology and the use of internet while at school, that includes the following:
 - a) notification to a parent of the adopted policies; and
 - b) the parent's ability to prohibit the student from the use of technology and the internet while at school in which covered information may be shared with an operator.
5. Exempts the following from the requirement concerning technology policies and a parent's ability to prohibit the student from the use of technology and the internet while at school:
 - a) software or technology that is used for the daily operations or administration of a local education agency; and
 - b) Arizona Online Instruction.
6. Allows an operator to use or disclose covered information of a student under the following circumstances:
 - a) federal or state law requires the operator to disclose the information and the operator complies with the requirement of federal and state law in protecting and disclosing that information;
 - b) the covered information is not used for advertising or to amass a profile on the student for purposes other than school purposes, for legitimate research purposes as required by state or federal law and subject to the restrictions under applicable state and federal law, or as allowed by state or federal law and in furtherance of school purposes; and
 - c) to a state or local education agency for school purposes as permitted by state or federal law.
7. Allows an operator to use student data, including covered information, for adaptive or customized student learning and states this does not allow an operator from disclosing or using student data, including covered information, in violation of the prohibitions concerning targeted advertising, amassing a student profile and selling or renting a student's information.
8. Specifies these prohibitions and requirements do not prohibit an operator from doing the following:
 - a) using information for maintaining, developing, supporting, improving or diagnosing the operator's site, service or application;
 - b) using covered information to improve educational products if that information is not associated with an identified student within the operator's site, service or application or other sites, services or applications owned by the operator;
 - c) using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including in the operator's marketing;
 - d) sharing covered information that is not associated with an identified student for the development and improvement of educational sites, service or applications;
 - e) using recommendation engines to recommend to a student:
 - i) additional content relating to an education, other learning or employment opportunity purpose within an online site, service or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; and

- ii) additional services relating to an educational, other learning or employment opportunity purpose within an online site, service or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; and
 - f) responding to a student's request for information or feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.
- 9. States these prohibitions and requirements do not:
 - a) limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order;
 - b) apply to general audience internet websites, general audience online services, general audience online applications or general audience mobile applications, even if login credentials created for an operator's site, service or application may be used to access those general audience sites, services or applications;
 - c) limit service providers from providing internet connectivity to schools, students and families;
 - d) prohibit an operator of an internet website, online service, online application or mobile application from marketing educational products directly to parents if the marketing does not result from the use of covered information obtained by the operator by providing services covered under this section;
 - e) impose a duty on a provider of an electronic store, gateway, marketplace or other means of purchasing or downloading software or applications to review or enforce compliance with this section on those applications or software;
 - f) impose a duty on a provider of an interactive computer service to review or enforce compliance with this section by third-party content providers;
 - g) prohibit students from downloading, exporting, transferring, saving or maintaining student data on documents; or
 - h) prohibit a local education agency from enacting policies and procedures regarding the collection and protection of student personal information.
- 10. Deems a violation of these prohibitions and requirements as an unlawful practice, in addition to any enforcement or regulatory action authorized by state or federal law, and allows the Attorney General to investigate and take appropriate action.
- 11. Defines the following terms:
 - a) *covered information*;
 - b) *interactive computer service*;
 - c) *operator*;
 - d) *school purposes*;
 - e) *service provider*; and
 - f) *targeted advertising*.
- 12. Becomes effective on the general effective date.

Amendments Adopted by Committee of the Whole

1. Prohibits the use, in addition to disclosure, of covered information except in certain circumstances.
2. Requires an operator to provide prominent notice before making material changes to its privacy policies.
3. Directs local education agencies to adopt policies regarding the use of technology in instruction, which include honoring a parent's right to object to learning materials or activities.
4. Specifies operators' use of student data for adaptive learning purposes does not permit an operator to disclose or use student data in violation of this act.

Amendments Adopted by the House of Representatives

- Modifies the requirement concerning local education agencies' policies on the use of technology and a parent's ability to prohibit a student from technology or the internet while at school.

Senate Action

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| ED | 2/02/17 | DP | 5-2-0 |
| 3 rd Read | 2/22/17 | | 28-2-0 |
| Final Read | 4/19/17 | | 25-3-2 |

House Action

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|----------------------|---------|----|------------|
| ED | 3/06/17 | DP | 9-1-0-1 |
| 3 rd Read | 4/14/17 | | 53-5-1-0-1 |

Signed by the Governor 4/21/17
Chapter 180

Prepared by Senate Research
May 2, 2017
CB/jn