
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1636 Session of
2015

INTRODUCED BY D. MILLER, NESBIT, MURT, ENGLISH, D. COSTA, ROZZI,
PASHINSKI, THOMAS, SCHLOSSBERG, CUTLER, BIZZARRO, GROVE,
SAYLOR, NEILSON, COHEN, LAWRENCE, HENNESSEY, DRISCOLL AND
KAUFER, OCTOBER 19, 2015

REFERRED TO COMMITTEE ON EDUCATION, OCTOBER 19, 2015

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," in preliminary provisions, providing
6 for contracts relating to student records.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
10 as the Public School Code of 1949, is amended by adding a
11 section to read:

12 Section 124. Contracts Relating to Student Records.--(a) A
13 school entity may, pursuant to a policy adopted by its board of
14 school directors or, in the case of a charter school, its
15 governing body, enter into a contract with a third party for
16 either or both of the following purposes:

17 (1) To provide services, including cloud-based services, for
18 the digital storage, management and retrieval of student
19 records.

1 (2) To provide digital educational software that authorizes
2 a third-party provider of digital educational software to
3 access, store and use student records in accordance with the
4 contractual provisions listed in subsection (b).

5 (b) A school entity that enters into a contract with a third
6 party for purposes of subsection (a) shall ensure the contract
7 contains all of the following:

8 (1) A statement that student records continue to be the
9 property of and under the control of the school entity.

10 (2) Notwithstanding paragraph (1), a description of the
11 means by which students may retain possession and control of
12 their own student-generated content, if applicable, including
13 options by which a student may transfer student-generated
14 content to a personal account.

15 (3) A prohibition against the third party using any
16 information in the student record for any purpose other than
17 those required or specifically permitted by the contract.

18 (4) A description of the procedures by which a parent, legal
19 guardian or eligible student may review personally identifiable
20 information in the student's records and correct erroneous
21 information.

22 (5) A description of the actions the third party will take,
23 including the designation and training of responsible
24 individuals, to ensure the security and confidentiality of
25 student records. Compliance with this paragraph shall not, in
26 itself, relieve the third party of liability in the event of an
27 unauthorized disclosure of student records.

28 (6) A description of the procedures for notifying the
29 affected parent, legal guardian or eligible student in the event
30 of an unauthorized disclosure of the student's records.

1 (7) A certification that a student's records shall not be
2 retained or available to the third party upon completion of the
3 terms of the contract and a description of how that
4 certification will be enforced. This paragraph shall not apply
5 to student-generated content if the student chooses to establish
6 or maintain an account with the third party for the purpose of
7 storing that content pursuant to paragraph (2).

8 (8) A description of how the school entity and the third
9 party will jointly ensure compliance with the Family Educational
10 Rights and Privacy Act (Public Law 90-247, 20 U.S.C. § 1232g).

11 (9) A prohibition against the third party using personally
12 identifiable information in student records to engage in
13 targeted advertising.

14 (c) In addition to any other penalties, a contract that
15 fails to comply with the requirements of this section shall be
16 rendered void if, upon notice and a reasonable opportunity to
17 cure, the noncompliant party fails to come into compliance and
18 cure any defect. Written notice of noncompliance may be provided
19 by any party to the contract. All parties subject to a contract
20 voided under this section shall return all student records in
21 their possession to the local educational agency.

22 (d) As used in this section, the following words and phrases
23 shall have the meanings given to them in this subsection unless
24 the context clearly indicates otherwise:

25 "Deidentified information." Information that cannot be used
26 to identify an individual student.

27 "Eligible student." A student who has reached 18 years of
28 age.

29 "School entity." A school district, private school, charter
30 school, vocational-technical school and intermediate unit.

1 "Student records."

2 (a) The term includes, but is not limited to:

3 (1) Any information directly related to a student that is
4 maintained by the school entity.

5 (2) Any information acquired directly from the student
6 through the use of instructional software or application
7 assigned to the student by a teacher or other school entity
8 employee.

9 (b) The term does not mean any of the following:

10 (1) Deidentified information, including aggregated
11 deidentified information, used by a third party to improve
12 instructional software or application for adaptive learning
13 purposes and for customizing student learning.

14 (2) Deidentified information, including aggregated
15 deidentified information, used to demonstrate the effectiveness
16 of the instructional software or application in the marketing of
17 the instructional software or application.

18 (3) Deidentified information, including aggregated
19 deidentified information, used for the development and
20 improvement of educational sites, services or applications.

21 "Student-generated content." Materials created by a student,
22 including, but not limited to, essays, research reports,
23 portfolios, creative writing, music or other audio files,
24 photographs and account information that enables ongoing
25 ownership of student content. The term does not include student
26 responses to a standardized assessment where student possession
27 and control would jeopardize the validity and reliability of the
28 assessment.

29 "Third party." A provider of digital educational software or
30 services, including cloud-based services, for the digital

1 storage, management and retrieval of student records.

2 Section 2. If the provisions of this act are in conflict
3 with the terms of a contract in effect before the effective date
4 of this section, the provisions of this act shall not apply to
5 the school entity or the third party subject to the contract
6 until the expiration, amendment or renewal of the contract.

7 Section 3. Nothing in this act shall be construed to impose
8 liability on a third party as defined by section 124 of the act
9 for content provided by any other third party.

10 Section 4. This act shall take effect in 60 days.