

HOUSE BILL REPORT

HB 1495

As Reported by House Committee On:
Education

Title: An act relating to the student user privacy in education rights act.

Brief Description: Enacting the student user privacy in education rights act.

Sponsors: Representatives Reykdal, Magendanz, Springer, S. Hunt, Pollet and Stanford.

Brief History:

Committee Activity:

Education: 2/5/15, 2/19/15 [DPS].

Brief Summary of Substitute Bill

- Requires school service providers to follow certain requirements related to:
 - privacy policies;
 - collection, use, and sharing of student personal information;
 - obtaining consent; and
 - security, privacy, confidentiality, and integrity of student personal information.

HOUSE COMMITTEE ON EDUCATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Santos, Chair; Ortiz-Self, Vice Chair; Reykdal, Vice Chair; Magendanz, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Stambaugh, Assistant Ranking Minority Member; Bergquist, Caldier, Fagan, Gregory, Griffey, Hargrove, Hayes, S. Hunt, Kilduff, Klippert, Lytton, McCaslin, Orwall, Pollet and Springer.

Staff: Megan Wargacki (786-7194).

Background:

School Services.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Elementary and secondary teachers are increasingly using websites, mobile applications, and online services provided by a third-party to a school or district. These school services allow a teacher to customize and personalize students' learning experiences; encourage collaboration between students in the classroom and across the globe; and enable students to learn in the classroom, at home, and on the go. Although these technologies have demonstrated their potential to transform the educational process, their use has generated concerns about how best to protect student privacy and secure student information.

Student Personal Information.

The federal Family Educational Rights and Privacy Act and state laws protect the personally identifiable information in students' education records from unauthorized disclosure. In general, schools must have written consent from the parent, or student when the right has transferred, to release any personally identifiable information from a student's education record. Education records are defined as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution, such as a school service provider.

Currently there are no Washington or federal laws that limit the collection, use, sharing, or sale of a student's personal information by third parties that are not acting for the educational agency or institution, but that provide services to schools and have access to student information.

Summary of Substitute Bill:

Privacy Policies.

School service providers (providers) must provide clear and easy to understand information about the types of student personal information (PI) they collect and about how they use and share this information. Prominent notice must be provided before material changes are made to school service privacy policies. Providers must make it easy for students or families to access and correct student PI.

Collection, Use, and Sharing.

Providers may collect, use, and share student PI only for authorized purposes or with the student or student's families consent. Providers are prohibited from selling student PI, using or sharing student PI for purposes of behaviorally targeting advertisements to students, and creating a personal profile of a student other than for supporting authorized purposes or with the consent. The use of student PI for adaptive learning or customized education purposes is not prohibited.

Consent.

Consent must be obtained before using student PI in a manner inconsistent with the provider's privacy policy. Where the student PI was collected directly from students, the provider must obtain consent from the student or the student's family. In all other cases, consent may be obtained from the educational institution or teacher. This act adopts and does not modify existing law regarding consent, including consent from minors and employees on behalf of educational institutions.

Security.

Providers must maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student PI. The program should use appropriate administrative, technological, and physical safeguards.

Providers may not knowingly retain student PI beyond the time period authorized by the relevant educational institution or teacher unless the provider has obtained consent from the student or the student's family. Providers must obligate third parties working on the providers' behalf and successors to these same privacy and security standards.

Future Contracts.

If a provider entered into a signed, written contract with an educational institution or teacher before the effective date of this act, the provider is not liable for these requirements.

Definitions.

The following terms are defined:

- "Behaviorally targeting advertisements" means delivering advertisements to a student where the advertisement is selected based on information obtained or inferred from that student's online behavior or usage of applications.
- "School service" means a website, mobile application, or online service that: (a) is designed and marketed for use in elementary or secondary educational institutions; (b) is used at the direction of teachers or other employees; and (c) collects, maintains, or uses student personal information. A "school service" does not include a web site, mobile application, or online service that is designed and marketed for use by individuals or entities generally, even if also marketed to elementary or secondary educational institutions.
- "School service provider" means an entity that operates a school service.
- "Students" refers to students of United States elementary and secondary schools.
- "Student personal information" means information collected through a school service that identifies an individual student or that is linked to information that identifies an individual student.

Substitute Bill Compared to Original Bill:

The term "behaviorally targeting advertisements" is defined to mean delivering advertisements to a student where the advertisement is selected based on information obtained or inferred from that student's online behavior or usage of applications.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) State laws are inadequate when it comes to third-party vendors. Vendors should not have 295 radically different contracts related to student privacy. Rather, there should be specific state requirements and more consistency across all districts. This bill will address all types of information that is used or shared with third parties. Microsoft supports this bill because it is a good balance between regulation and innovation. It prohibits wrong uses of student data, such as targeted advertising, but allows good uses, such as targeting programs to the unique needs to students. Schools and districts are currently transferring data outside the district without ensuring adequate privacy and security protections. Currently laws have not kept pace with technology and could allow people to use student data for reasons other than educational reasons. The principles in this bill enjoy widespread support. The Parent Teacher Association supports the bill.

(In support with concerns) Vendors who work with the Office of the Superintendent of Public Instruction support the bill. These vendors need to have access to student information and, though they support the bill, are trying to figure out the bill requirements that will work in all circumstances.

(Opposed) None.

Persons Testifying: (In support) Representative Reykdal, prime sponsor; Ryan Hawkins, Microsoft; and Tim Ferrell, Washington State Parent Teacher Association.

(In support with concerns) Carolyn Logue, K12 On Behalf Of DCI Group LLC.

Persons Signed In To Testify But Not Testifying: None.