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H.B. 333 133rd General Assembly	Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Cross

Hannah K. Wann, Research and Drafting Supervisor

SUMMARY

- Expressly permits public schools to contract with third parties to provide digital student record storage, management, and retrieval and prescribes requirements for those contracts.

DETAILED ANALYSIS

Student digital records management by third parties

The bill expressly permits all public schools (schools operated by a school district, community schools, STEM schools, and college-preparatory boarding schools)[1] to contract with third-party providers of digital educational software or services for (1) cloud-based services for the digital storage, management, and retrieval of student records, and (2) digital educational software that authorizes the third-party to access, store, and use student records.[2] Current law provides broad contracting authority to school districts and the other types of public schools, under which they might be able to enter into such contracts, as long as compliance with student privacy laws is maintained.[3] The bill prescribes specific requirements for these contracts.

Student records

Under the bill, student records include any information directly related to a student maintained by the school district or school and any information acquired directly from the student through the use of instructional software or applications assigned to the student by a

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[1] R.C. 3301.943, 3314.03(A)(11)(d), 3326.11, and 3328.24.

[2] R.C. 3301.943(A)(3) and (B)(2).

[3] See R.C. 3313.17, 3314.01, 3326.07, and 3328.02, none in the bill.

teacher or other district employee. If the information cannot be connected to a particular student, it is not a student record. Thus, aggregated data is not considered a student record for purposes of the bill. Moreover, the bill specifically permits aggregated information to be used by a third-party provider for the following:

1. To improve educational products, for adaptive learning purposes, and for customizing student learning;

2. To demonstrate the effectiveness of the operator's products in the marketing of those products; and

3. For the development and improvement of educational sites, services, or applications.[4]

Contract requirements

The bill requires contracts entered into with a third-party provider of digital educational software or services to include all of the following:

1. A statement that student records continue to be the property of and under the control of the district or school.

2. A description of the means by which students may retain possession and control of their own student-generated content, if applicable, including options by which a student may transfer student-generated content to a personal account. The bill defines "student-generated content" as materials created by a student, including essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of that content. However, it does not include student responses to standardized assessments where student possession and control would jeopardize the validity and stability of the assessment.[5]

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

4. A description of the procedures by which a parent, guardian, or student, if the student is at least 18 years old, may review personally identifiable information in the student's records and correct erroneous information.

5. A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of student records. The bill specifies that compliance with this requirement does not absolve the third party of liability in the event of an unauthorized disclosure of student records.

6. A description of the procedures for notifying the affected parent, guardian, or student, if the student is at least 18 years old, in the event of an unauthorized disclosure of the student's records.

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[4] R.C. 3301.943(A)(2)(b) and (B)(1).

[5] R.C. 3301.943(A)(1).

7. A certification that a student's records will not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced. This requirement does not apply to student-generated content if the student chooses to establish or maintain an account with the third party for the purpose of storing that content.

8. A description of how the district board and the third party will jointly ensure compliance with state and federal student privacy laws. Under those laws, generally, an educational institution may not release student records without consent, except for certain circumstances, including (among others) release to other school officials for legitimate educational interests and conditional release to organizations conducting studies for the institution.[6]

9. A prohibition against the third party using personally identifiable information in student records to engage in targeted advertising.

10. A prohibition against the state or a school district holding the third party harmless or indemnifying the third party in any manner that violates the debt limitations imposed on the state or a school district by state law or the state constitution. Any contract provision that conflicts with this provision is void and unenforceable.[7] Generally, a school district may not incur net indebtedness in excess of 9% of its tax valuation.[8] In addition, a district may not enter into any contract valued at 500,000 or 1% of its resources for the current fiscal year, unless it contains a certificate attesting to adequate resources to pay for the contract signed by the district board president, treasurer, and superintendent (unless the district is in fiscal emergency in which case it must be signed by a member of its financial planning and supervision commission).[9]

The bill specifies that a contract that fails to comply with these requirements is void if the noncompliant party does not come into compliance with them. The bill requires all parties subject to a contract to return all student records to the school or school district in the case of a voided contract. It also specifies that it does not apply to contracts entered into prior to the bill's effective date and that nothing in the bill is meant to impose liability on a third party for content not provided by that party.[10]

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[6] See R.C. 3319.321, not in the bill and the "Family Educational Rights and Privacy Act" (FERPA), 20 United States Code 1232g. See also 34 Code of Federal Regulations 99.

[7] R.C. 3301.943(C).

[8] R.C. 133.06(B), not in the bill.

[9] R.C. 5705.412, not in the bill.

[10] R.C. 3301.943(D) to (F).

HISTORY

Action	Date
Introduced	09-12-19