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S.B. 29
135th General Assembly

Bill Analysis

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Version: As Reported by House Primary and Secondary Education

Primary Sponsor: Sen. S. Huffman

Holly Gilman, Attorney

Corrected Version*

SUMMARY

Use of educational records by technology providers

- Specifies that educational records created, received, maintained, or disseminated by a technology provider are solely the property of the school district with which the provider has contracted.
- Generally prohibits a technology provider from selling, sharing, or disseminating educational records or using those records for a commercial purpose.
- Requires each contract between a technology provider and a school district to ensure appropriate security safeguards for educational records.
- Requires each school district to provide parents and students with notice of any curriculum, testing, or assessment technology provider contract affecting a student's educational records.
- Permits a school district or a technology provider to electronically access or monitor a student's activity on a school-issued device only in specific limited circumstances and requires the school district to notify parents of any permitted access.

Educational support services data

- Prohibits any person from releasing or permitting access to educational support services data concerning any student attending a public school for any reason.
- Requires that educational support services data be made available to the state Opportunities for Ohioans with Disabilities agency.
- Exempts educational support services data from Ohio's Public Records laws.

* This version corrects the definition of "school-issued device."

Licensure penalties for release of confidential information

- Permits the State Board of Education to refuse to issue, limit, suspend, or revoke the license of an individual who uses or releases information that is confidential under state or federal law concerning a student or student's family member for purposes other than student instruction.

DETAILED ANALYSIS

Use of educational records by technology providers

The bill governs the collection, use, and protection of educational records by technology providers.

For purposes of the bill, a “technology provider” is a person who contracts with a school district to provide a school-issued device for student use and creates, receives, or maintains educational records pursuant to or incidental to its contract with the district.¹ Further, “educational records” include records, files, documents, and other materials that contain information directly related to a student and are maintained by a school district board of education or by a person acting for the school district.² Under continuing state and federal law, educational records are confidential and cannot be released without parental permission.³ The bill provides that the following types of documents are not subject to confidentiality:

1. Records of educational personnel that are in the sole possession of the maker and are not revealed to anyone but a substitute teacher;
2. Employee personnel records;
3. Records of an adult student, which are made or maintained by a recognized professional or paraprofessional acting in a professional capacity and that are used only in connection with treatment and not available to any other persons except by a physician or other appropriate professional of the student's choice.⁴

These exceptions are in compliance with federal law.⁵

A “school-issued device” means hardware, software, devices, and accounts that a school district, acting independently or with a technology provider, provides to an individual student for that student's dedicated personal use.⁶

¹ R.C. 3319.325(E).

² R.C. 3319.325(A).

³ R.C. 3319.321, not in bill.

⁴ R.C. 3319.325(A).

⁵ 20 United States Code 1232g(A)(4)(B).

⁶ R.C. 3319.325(C).

Maintenance of educational records

The bill specifies that educational records created, received, maintained, or disseminated by a technology provider are solely property of the school district. If records maintained by the technology provider are subject to a security breach, the provider must disclose to the school district all information necessary to comply with Ohio law on agency disclosures of security breaches.⁷ Relatedly, the bill subjects technology providers to the continuing law provisions regarding security breaches of computerized personal information data.⁸

Within 90 days of the expiration of a contract, unless renewal is reasonably anticipated, the bill requires a technology provider to destroy or return to the appropriate school district all educational records created, received, or maintained pursuant to or incidental to the contract.⁹

The bill prohibits a technology provider from selling, sharing, or disseminating educational records except as permitted or as part of a valid delegation or assignment of the contract with a school district. It also prohibits a technology provider from using educational records for any commercial purpose, including marketing or advertising to a student or parent. However, the provider may use aggregate redacted information for improving, maintaining, developing, supporting, or diagnosing the provider's site, service, or operation.¹⁰

Security safeguards

The bill requires that each contract between a technology provider and a school district ensure appropriate security safeguards for educational records and include: (1) a restriction on unauthorized access by the technology provider's employees or contractors, and (2) a requirement that the technology provider's employees may access educational records only as necessary to perform official duties.¹¹

Parental notice and inspection

Not later than August 1 of each school year, the bill requires each school district to provide parents and students with direct and timely notice by mail, email, or other direct communication, of any curriculum, testing, or assessment technology provider contract affecting a student's educational records. The notice must:

1. Identify each technology provider with access to educational records;
2. Identify the educational records affected by the contract;

⁷ R.C. 3319.326(A) and (B).

⁸ See R.C. 1347.12, not in the bill.

⁹ R.C. 3319.326(C).

¹⁰ R.C. 3319.326(D) and (E).

¹¹ R.C. 3319.326(F).

3. Include information about the contract inspection and provide contact information for a school department to which a parent or student may direct questions or concerns regarding any program or activity that allows a curriculum, testing, or assessment technology provider to access a student's educational records.

Parents and students must be given an opportunity to inspect a complete copy of any contract with a technology provider.¹²

Prohibitions related to school-issued devices

The bill prohibits a school district or a technology provider from electronically accessing or monitoring: (1) location-tracking features of a school-issued device, (2) audio or visual receiving, transmitting, or recording features of a school-issued device, or (3) student interactions with a school issued device, including keystrokes and web-browsing activity.¹³

The bill waives this prohibition when the access or monitoring is any of the following circumstances:

1. Limited to a noncommercial educational purpose for instruction, technical support, or exam-proctoring by school district employees, student teachers, or contractors, vendors, or the Department of Education, provided advance notice is given;
2. Permitted under a judicial warrant;
3. Based upon the device being missing or stolen;
4. Necessary to prevent or respond to a threat to life or safety, and limited to that purpose;
5. Necessary to comply with federal or state law; or
6. Necessary to participate in federal or state funding programs.¹⁴

When a school district or technology provider elects to generally monitor a school-issued device for any of the circumstances outlined above, the school district must provide annual notice of that fact to its students' parents. In the event that one of the circumstances is triggered, the school district must give notice of that fact to the student's parent within 72 hours. The 72-hour notice must include a written description of the triggering circumstance, identifying which features of the device were accessed and a description of the threat, if any. If notice would pose a threat to life or safety, it must instead be given within 72 hours after the threat has ceased.¹⁵

¹² R.C. 3319.326(G).

¹³ R.C. 3319.327(A).

¹⁴ R.C. 3319.327(B).

¹⁵ R.C. 3319.327(C).

Educational support services data

The bill also prohibits any person from releasing or permitting access to educational support services data concerning any student attending a public school for any reason except where provided otherwise in law. The bill requires educational support services data to be made available to the state Opportunities for Ohioans with Disabilities agency in furtherance of the agency's duties and supports for individuals with disabilities.¹⁶ It further provides that educational support services data are not subject to Ohio's Public Records laws.¹⁷

The bill defines "educational support services data" as data on individuals collected, created, maintained, used, or disseminated relating to programs administered by a school district board of education or an entity under contract with a school district designed to eliminate disparities and advance equities in educational achievement for youth by coordinating services available to participants, regardless of the youth's involvement with other government services.¹⁸

Licensure penalties for release of confidential information

The bill permits the State Board of Education to take action against an individual who uses or releases information that is confidential under state or federal law concerning a student or student's family member for purposes other than student instruction. These actions include refusing to issue a license to an applicant, limiting a license that the State Board issues to an applicant, suspending, revoking, or limiting a license that has been issued by the State Board, or revoking an expired license. This provision applies to licenses, certificates, and permits issued by the State Board.¹⁹

HISTORY

Action	Date
Introduced	01-23-23
Reported, S. Education	11-14-23
Passed Senate (30-0)	11-15-23
Reported, H. Primary and Secondary Education	--

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¹⁶ R.C. 3319.327(C); see also R.C. 3304.15, not in the bill.

¹⁷ R.C. 149.43(A)(1)(tt).

¹⁸ R.C. 3319.325(B).

¹⁹ R.C. 3319.31(B)(5).