

AMENDED IN SENATE AUGUST 22, 2014  
AMENDED IN SENATE JULY 1, 2014  
AMENDED IN SENATE JUNE 5, 2014  
AMENDED IN ASSEMBLY MAY 1, 2014  
AMENDED IN ASSEMBLY APRIL 7, 2014  
AMENDED IN ASSEMBLY MARCH 25, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1442**

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**Introduced by Assembly Member Gatto  
(Coauthor: Assembly Member Gonzalez)  
(Coauthor: Senator Lara)**

January 6, 2014

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An act to add Section 49073.6 to the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1442, as amended, Gatto. Pupil records: social media.

Existing law requires school districts to establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education.

This bill would, notwithstanding that provision, require a school district, county office of education, or charter school that considers a program to gather or maintain in its records any information obtained from social media, as defined, of any pupil enrolled in the school district, county office of education, or charter school to first notify pupils and their parents or guardians about the proposed program, and to provide

an opportunity for public comment at a regularly scheduled public meeting before the adoption of the program. The bill would require a school district, county office of education, or charter school that adopts a program pursuant to these provisions to, among other things, gather and maintain only information that ~~was made publicly accessible, as defined,~~ *pertains directly to school safety or to pupil safety*, provide a pupil with access to any information about the pupil obtained from social media, and destroy the information gathered from social media and maintained in its records, as provided. If a school district, county office of education, or charter school contracts with a 3rd party to gather information from social media on an enrolled pupil, the bill would prohibit ~~the use, sale, or sharing of the information by the 3rd party,~~ *party from using the information for purposes other than to satisfy the terms of the contract, prohibit the 3rd party from selling or sharing the information with any person or entity, except as provided*, and would provide additional restrictions on the destruction of the information by the 3rd party, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 49073.6 is added to the Education Code,  
 2 to read:  
 3 49073.6. (a) For purposes of this section, the following terms  
 4 have the following meanings:  
 5 (1) ~~“Eligible pupil” means any pupil 18 years of age or older.~~  
 6 (2) ~~“School purposes” means for purposes that (A) customarily~~  
 7 ~~take place at the direction of a school, teacher, school district,~~  
 8 ~~county office of education, or charter school, or (B) aid in the~~  
 9 ~~administration of school activities, including, but not limited to,~~  
 10 ~~instruction in the classroom or at home, administrative activities,~~  
 11 ~~or collaboration between pupils, school personnel, and parents or~~  
 12 ~~guardians.~~  
 13 (1) *“Educational purposes” means for purposes that aid in*  
 14 *instruction in the classroom or at home, or in classroom*  
 15 *administration.*  
 16 (3)  
 17 (2) (A) *“Social media” means an electronic service or account,*  
 18 *or electronic content, including, but not limited to, videos, still*

1 photographs, blogs, video blogs, podcasts, instant and text  
2 messages, email, online services or accounts, or Internet Web site  
3 profiles or locations.

4 (B) “Social media” shall not include an electronic service or  
5 account used exclusively for ~~school purposes~~; *educational purposes*  
6 *or primarily to facilitate creation of school-sponsored publications,*  
7 *such as a yearbook or pupil newspaper, under the direction or*  
8 *control of a school, teacher, or yearbook adviser.*

9 ~~(4) (A) “Publicly accessible” means anything posted on social~~  
10 ~~media or any other Internet Web site that is accessible to the~~  
11 ~~general public.~~

12 ~~(B) “Publicly accessible” shall not include anything posted on~~  
13 ~~social media or any other Internet Web site that is only accessible~~  
14 ~~to a restricted group of persons.~~

15 (b) Notwithstanding any other law or regulation, a school  
16 district, county office of education, or charter school that considers  
17 a program to gather or maintain in its records any information  
18 obtained from social media of any enrolled pupil shall notify pupils  
19 and their parents or guardians about the proposed program and  
20 provide an opportunity for public comment at a regularly scheduled  
21 public meeting of the governing board of the school district or  
22 county office of education, or governing body of the charter school,  
23 as applicable, before the adoption of the program. The notification  
24 required by this subdivision may be provided as part of the  
25 notification required pursuant to Section 48980.

26 (c) ~~Notwithstanding any other law or regulation, Section 49062,~~  
27 a school district, county office of education, or charter school that  
28 adopts a program pursuant to subdivision (b) shall do all of the  
29 following:

30 (1) Gather or maintain only information that ~~was made publicly~~  
31 ~~accessible, which shall not include either of the following:~~ *pertains*  
32 *directly to school safety or to pupil safety.*

33 ~~(A) Information that the school district, county office of~~  
34 ~~education, or charter school knows or has reason to believe was~~  
35 ~~reposted or otherwise made publicly accessible by another party~~  
36 ~~without the express consent of the original author.~~

37 ~~(B) Any secondary information, including, but not limited to,~~  
38 ~~geolocation information, derived from content posted to social~~  
39 ~~media, unless that secondary information was intentionally made~~  
40 ~~publicly accessible or unless the school district, county office of~~

1 education, or charter school has obtained consent from an eligible  
2 pupil or a parent or guardian.

3 (2) Provide a pupil with access to any information about the  
4 pupil gathered or maintained by the school district, county office  
5 of education, or charter school that was obtained from social media,  
6 and an opportunity to correct or delete such information.

7 (3) (A) Destroy information gathered from social media and  
8 maintained in its records within one year after a pupil turns 18  
9 years of age or within one year after the pupil is no longer enrolled  
10 in the school district, county office of education, or charter school,  
11 whichever occurs first.

12 (B) Notify each parent or guardian of a pupil subject to the  
13 program that the pupil’s information is being gathered from social  
14 media and that any information subject to this section maintained  
15 in the school district’s, county office of education’s, or charter  
16 school’s records with regard to the pupil shall be destroyed in  
17 accordance with subparagraph (A). The notification required by  
18 this subparagraph may be provided as part of the notification  
19 required pursuant to Section 48980. The notification shall include,  
20 but is not limited to, all of the following:

21 (i) An explanation of the process by which a pupil or a pupil’s  
22 parent or guardian may access the pupil’s records for examination  
23 of the information gathered or maintained pursuant to this section.

24 (ii) An explanation of the process by which a pupil or a pupil’s  
25 parent or guardian may request the removal of information or make  
26 corrections to information gathered or maintained pursuant to this  
27 section.

28 (C) If the school district, county office of education, or charter  
29 school contracts with a third party to gather information from social  
30 media on an enrolled pupil, *require* the contract ~~shall~~ to do all of  
31 the following:

32 (i) Prohibit the third party from using the information for ~~its~~  
33 ~~own purposes~~. *purposes other than to satisfy the terms of the*  
34 *contract.*

35 (ii) Prohibit the third party from selling or sharing the  
36 information with any person or entity other than the school district,  
37 county office of education, ~~or charter school~~. *school, or the pupil*  
38 *or his or her parent or guardian.*

39 (iii) ~~Require the third party to destroy the information~~  
40 ~~immediately upon satisfying the terms of the contract, within one~~

1 ~~year after a pupil turns 18 years of age, or within one year after~~  
2 ~~the pupil is no longer enrolled in the school district, county office~~  
3 ~~of education, or charter school, whichever occurs first.~~

4 *(iii) Require the third party to destroy the information*  
5 *immediately upon satisfying the terms of the contract.*

6 *(iv) Require the third party, upon notice and a reasonable*  
7 *opportunity to act, to destroy information pertaining to a pupil*  
8 *when the pupil turns 18 years of age or is no longer enrolled in*  
9 *the school district, county office of education, or charter school,*  
10 *whichever occurs first. The school district, county office of*  
11 *education, or charter school shall provide notice to the third party*  
12 *when a pupil turns 18 years of age or is no longer enrolled in the*  
13 *school district, county office of education, or charter school. Notice*  
14 *provided pursuant to this clause shall not be used for any other*  
15 *purpose.*