

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1584

Introduced by Assembly Member Buchanan
(Principal coauthor: Assembly Member Chau)

February 3, 2014

An act to add Section 49073.1 to the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1584, as amended, Buchanan. Pupil records: privacy: third-party contracts: digital storage services and digital educational software.

Existing law prohibits a school district from permitting access to pupil records to any person without parental consent or without a judicial order, except to specified persons under certain circumstances, including to a contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant.

This bill would authorize a local educational agency to enter into a contract with a third party to provide services for the digital storage, management, and retrieval of pupil records or to provide digital educational software, or both. The bill would require the contract to include specified provisions, including a statement that the pupil records continue to be the property of and under the control of the local educational agency, a description of the actions the third party will take to ensure the security of the pupil records, and a description of how the

local educational agency and the third party will jointly ensure compliance with specified federal privacy acts.

The bill would provide that, if these provisions are in conflict with the terms of a contract in effect before January 1, 2015, the provisions shall not apply to the local educational agency or the third party subject to that agreement until the expiration, amendment, or renewal of the agreement.

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 49073.1 is added to the Education Code,
- 2 to read:
- 3 49073.1. (a) A local educational agency may enter into a
- 4 contract with a third party for either or both of the following
- 5 purposes:
- 6 (1) To provide services, including cloud-based services, for the
- 7 digital storage, management, and retrieval of pupil records.
- 8 (2) To provide digital educational software that authorizes a
- 9 third-party provider of digital educational software to access and
- 10 acquire pupil records.
- 11 (b) A local educational agency that enters into a contract with
- 12 a third party for purposes of subdivision (a) shall ensure the
- 13 contract contains all of the following:
- 14 (1) A statement that pupil records continue to be the property
- 15 of and under the control of the local educational agency.
- 16 (2) A prohibition against the third party using information in
- 17 individual pupil records for commercial or advertising purposes.
- 18 (3) A prohibition against the third party ~~releasing any~~
- 19 ~~information in a pupil record to any unauthorized individual or~~
- 20 ~~entity without the prior written approval of the eligible pupil or~~
- 21 ~~the pupil's parent or legal guardian using any information in the~~
- 22 ~~pupil record for any purpose other than for the requirements of~~
- 23 ~~the contract.~~
- 24 (4) A description of the procedures by which a parent, legal
- 25 guardian, or eligible pupil may review the pupil's records and
- 26 correct erroneous information.
- 27 (5) A description of the actions the third party will take,
- 28 including the designation and training of responsible individuals,

1 to ensure the security of pupil records. Compliance with this
2 requirement shall not, in itself, absolve the third party of liability
3 in the event of an unauthorized disclosure of pupil records.

4 (6) The assignment of liability and the procedures for notifying
5 the affected parent, legal guardian, and eligible pupil in the event
6 of an unauthorized disclosure of the pupil's records.

7 (7) A certification that a pupil's records shall not be retained or
8 available to the third party when that pupil is no longer enrolled
9 in the local educational agency and a description of how that
10 certification will be enforced.

11 (8) A description of how the local educational agency and the
12 third party will jointly ensure compliance with the federal Family
13 Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and
14 the federal Children's Online Privacy Protection Act of 1998 (15
15 U.S.C. Sec. 6501 et seq.) for all pupils, including pupils who are
16 more than 13 years of age.

17 (9) A contract that fails to comply with the requirements of this
18 subdivision shall be voidable and all pupil records in possession
19 of the third party shall be returned to the local educational agency.

20 (c) For purposes of this section, the following terms have the
21 following meanings:

22 (1) "Eligible pupil" means a pupil who has reached 18 years of
23 age.

24 (2) "Local educational agency" includes school districts, county
25 offices of education, and charter schools.

26 (3) "Third party" refers to a provider of digital educational
27 software or services, including cloud-based services, for the digital
28 storage, management, and retrieval of pupil records.

29 SEC. 2. If the provisions of this section are in conflict with the
30 terms of a contract in effect before January 1, 2015, the provisions
31 of this section shall not apply to the local educational agency or
32 the third party subject to that agreement until the expiration,
33 amendment, or renewal of the agreement.