

AMENDED IN SENATE JUNE 3, 2014
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, *as defined*, to enter into a contract with a third party, *as defined*, to provide services for the digital storage, management, and retrieval of pupil records, *as defined*, 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 *personally*
 17 *identifiable* information in individual pupil records for commercial
 18 or advertising purposes.
 19 (3) A prohibition against the third party using any information
 20 in the pupil record for any purpose other than for the requirements
 21 of the contract.
 22 (4) A description of the procedures by which a parent, legal
 23 guardian, or eligible pupil may review the pupil’s records and
 24 correct erroneous information.
 25 (5) A description of the actions the third party will take,
 26 including the designation and training of responsible individuals,
 27 to ensure the security of pupil records. Compliance with this

1 requirement shall not, in itself, absolve the third party of liability
2 in the event of an unauthorized disclosure of pupil records.

3 ~~(6) The assignment of liability and the~~ *A description of the*
4 ~~procedures for notifying the affected parent, legal guardian, and~~
5 ~~eligible pupil in the event of an unauthorized disclosure of the~~
6 ~~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 upon completion of the terms of~~
10 ~~the contract~~ and a description of how that certification will be
11 enforced.

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

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

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

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

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

27 (3) "*Personally identifiable information*" means information
28 *that may be used on its own or with other information to identify*
29 *an individual pupil.*

30 (4) (A) "*Pupil records*" means both of the following:

31 (i) *Any information directly related to a pupil that is maintained*
32 *by the local educational agency.*

33 (ii) *Any information acquired directly from the pupil through*
34 *the use of instructional software or applications assigned to the*
35 *pupil by a teacher or other local educational agency employee.*

36 (B) "*Pupil records*" do not include records of teachers and
37 school administrators that are kept in their sole possession and
38 not revealed to any other individual except a substitute teacher.

39 (3)

1 (5) “Third party” refers to a provider of digital educational
2 software or services, including cloud-based services, for the digital
3 storage, management, and retrieval of pupil records.

4 (d) *If the provisions of this section are in conflict with the terms*
5 *of a contract in effect before January 1, 2015, the provisions of*
6 *this section shall not apply to the local educational agency or the*
7 *third party subject to that agreement until the expiration,*
8 *amendment, or renewal of the agreement.*

9 ~~SEC. 2. If the provisions of this section are in conflict with the~~
10 ~~terms of a contract in effect before January 1, 2015, the provisions~~
11 ~~of this section shall not apply to the local educational agency or~~
12 ~~the third party subject to that agreement until the expiration,~~
13 ~~amendment, or renewal of the agreement.~~