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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: 3rd-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, *pursuant to a policy adopted by its governing board or governing body, as appropriate*, to enter into a contract with a 3rd 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 3rd party will take to ensure the security and confidentiality of pupil records, and a description of how the local educational agency and the 3rd party will jointly ensure compliance with ~~specified federal privacy acts~~ *the federal Family Educational Rights and Privacy Act*. The bill would require that a contract that fails to comply with the requirements of this bill be rendered void if certain conditions are satisfied.

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 3rd 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~~ *may, pursuant*
 4 *to a policy adopted by its governing board or, in the case of a*
 5 *charter school, its governing body, enter into a contract with a*
 6 *third party for either or both of the following purposes:*
 7 (1) To provide services, including cloud-based services, for the
 8 digital storage, management, and retrieval of pupil records.
 9 (2) To provide digital educational software that authorizes a
 10 third-party provider of digital educational software to ~~access and~~
 11 ~~acquire~~ *access, store, and use pupil records in accordance with*
 12 *the contractual provisions listed in subdivision (b).*
 13 (b) A local educational agency that enters into a contract with
 14 a third party for purposes of subdivision (a) shall ensure the
 15 contract contains all of the following:
 16 (1) A statement that pupil records continue to be the property
 17 of and under the control of the local educational agency. ~~For~~

1 ~~purposes of this paragraph, “pupil records” does not include~~
2 ~~pupil-generated content.~~

3 (2) ~~Notwithstanding paragraph (1), a~~ description of the means
4 by which pupils may retain possession and control of their own
5 pupil-generated content, if ~~any applicable, including options by~~
6 ~~which a pupil may transfer pupil-generated content to a personal~~
7 ~~account.~~

8 (3) A prohibition against the third party using any information
9 in the pupil record for any purpose other than ~~for the requirements~~
10 ~~of the contract those required or specifically permitted by the~~
11 ~~contract.~~

12 (4) A description of the procedures by which a parent, legal
13 guardian, or eligible pupil may review *personally identifiable*
14 *information in* the pupil’s records and correct erroneous
15 information.

16 (5) A description of the actions the third party will take,
17 including the designation and training of responsible individuals,
18 to ensure the security and confidentiality of pupil records.
19 Compliance with this requirement shall not, in itself, absolve the
20 third party of liability in the event of an unauthorized disclosure
21 of pupil records.

22 (6) A description of the procedures for notifying the affected
23 parent, legal guardian, ~~and~~ or eligible pupil in the event of an
24 unauthorized disclosure of the pupil’s records.

25 (7) (A) A certification that a pupil’s records shall not be retained
26 or available to the third party upon completion of the terms of the
27 contract and a description of how that certification will be enforced.

28 (B) *The requirements provided in subparagraph (A) shall not*
29 *apply to pupil-generated content if the pupil chooses to establish*
30 *or maintain an account with the third party for the purpose of*
31 *storing that content pursuant to paragraph (2).*

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

38 (9) A prohibition against the third party using personally
39 identifiable information in pupil records to engage in targeted
40 advertising.

1 (c) In addition to any other penalties, a contract that fails to
 2 comply with the requirements of this section shall be rendered
 3 void if, upon notice and a reasonable opportunity to cure, the
 4 noncompliant party fails to come into immediate compliance and
 5 cure any defect. Written notice of noncompliance may be provided
 6 by any party ~~or intended beneficiary of~~ to the contract. All parties
 7 subject to a contract voided under this subdivision shall
 8 immediately return all pupil records in their possession to the local
 9 educational agency.

10 (d) For purposes of this section, the following terms have the
 11 following meanings:

12 (1) “Deidentified information” means information that cannot
 13 be used to identify an individual pupil.

14 (2) “Eligible pupil” means a pupil who has reached 18 years of
 15 age.

16 (3) “Local educational agency” includes school districts, county
 17 offices of education, and charter schools.

18 (4) “Pupil-generated content” means materials created by a
 19 pupil, including, but not limited to, essays, research reports,
 20 portfolios, creative writing, music or other audio files, ~~and~~
 21 ~~photographs~~ files, photographs, and account information that
 22 enables ongoing ownership of pupil content. “Pupil-generated
 23 content” does not include pupil responses to a standardized
 24 assessment where pupil possession and control would jeopardize
 25 the validity and reliability of that assessment.

26 (5) (A) “Pupil records” means both of the following:

27 (i) Any information directly related to a pupil that is maintained
 28 by the local educational agency.

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

32 (B) “Pupil records” does not mean any of the following:

33 (i) Deidentified information, including aggregated deidentified
 34 information, used by the third party to improve educational
 35 products for adaptive learning purposes and for customizing pupil
 36 learning.

37 (ii) Deidentified information, including aggregated deidentified
 38 information, used to demonstrate the effectiveness of the operator’s
 39 products in the marketing of those products.

1 (iii) Deidentified information, including aggregated deidentified
2 information, used for the development and improvement of
3 educational sites, services, or applications.

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

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

12 (f) *Nothing in this section shall be construed to impose liability*
13 *on a third party for content provided by any other third party.*