

# ASSEMBLY, No. 4873

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 10, 2015

**Sponsored by:**

**Assemblywoman MARLENE CARIDE**

**District 36 (Bergen and Passaic)**

**SYNOPSIS**

“Student Digital Privacy and Parental Rights Act.”

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the privacy of certain student digital  
2 information and supplementing chapter 36 of Title 18A of the  
3 New Jersey Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. This act shall be known and may be cited as the “Student  
9 Digital Privacy and Parental Rights Act.”

10  
11 2. As used in this act:

12 “Covered information” means personally identifiable information  
13 and information that is linked or linkable to personally identifiable  
14 information that:

15 a. is collected or generated through a school service; and

16 b. (1) the operator of the school service knows or should know  
17 relates to a student, or

18 (2) is collected, generated, or maintained at the direction of the  
19 public or nonpublic school serving the student or at the direction of  
20 officials of that school, including teachers.

21 “K-12 purposes” means purposes that: aid in the administration  
22 of activities by a public or nonpublic school, including instruction  
23 in the classroom or at home, administrative activities, and  
24 collaboration between students, school personnel, or parents and  
25 guardians; or are for the use and benefit of the public or nonpublic  
26 school.

27 “Online contact information” means, with respect to a student, an  
28 email address or any other substantially similar identifier that  
29 permits direct contact with the student online, including an instant  
30 messaging user identifier, a Voice Over Internet Protocol identifier,  
31 a video chat user identifier, or a screen name or user name that  
32 permits the contact.

33 “Operator” means an entity that operates a school service, except  
34 that the term shall not include a public or nonpublic school.

35 “Personally identifiable information” includes, with respect to a  
36 student: the student’s first and last name; the first and last name of  
37 the student’s parent or guardian or another family member; the  
38 home or physical address of the student or student’s family; online  
39 contact information for the student; a personal identifier, such as the  
40 student’s social security number, student number, or biometric  
41 record; a persistent identifier that can be used to recognize a user  
42 over time and across different Internet Web sites, online services,  
43 online applications, or mobile applications, including a customer  
44 number held in a cookie, an Internet Protocol address, a processor  
45 or device serial number, or another unique identifier; a photograph,  
46 video, or audio recording that contains the student’s image or voice;  
47 geolocation information sufficient to identify a street name and the  
48 name of a city or town; other indirect identifiers, such as the

1 student's date of birth, place of birth, or mother's maiden name;  
2 other information that, alone or in combination, would allow an  
3 operator or a reasonable person in the school community, who does  
4 not have personal knowledge of the relevant circumstances, to  
5 identify a specific student with reasonable certainty; and  
6 information requested by a person who the public or nonpublic  
7 school reasonably believes knows the identity of the student to  
8 whom the information relates.

9 "School service" means an Internet Web site, online service  
10 including a cloud computing service, online application, or mobile  
11 application that is used for K-12 purposes and was designed and  
12 marketed for K-12 purposes.

13 "Student" means any individual who is or has been enrolled in a  
14 public school or nonpublic school.

15 "Targeted advertising" means presenting advertisements to a  
16 student or the student's parent or guardian, where the  
17 advertisements are selected based on information obtained or  
18 inferred from the student's online behavior or use of online  
19 applications or mobile applications or from covered information  
20 about the student maintained by the operator of a school service.

21 "Targeted advertising" shall not include presenting advertisements  
22 to a student or the student's parent or guardian at an online location  
23 or through an online application or mobile application, if: the  
24 advertisements are contextually relevant; the advertisements are  
25 selected based on a single visit or session of use during which the  
26 advertisements are presented; and information about the student's  
27 online behavior or use of online applications or mobile applications  
28 is not collected or retained over time.

29

30 3. An operator shall not knowingly:

- 31 a. engage in or permit targeted advertising on a school service;  
32 b. collect, generate, use, or disclose any covered information  
33 for purposes of targeted advertising;  
34 c. sell covered information to a third party;  
35 d. collect, generate, or use covered information, including  
36 using covered information to create a personal profile of a student,  
37 other than for K-12 purposes; or

38 e. disclose covered information, unless the disclosure is made:

39 (1) pursuant to lawful process or to ensure legal and regulatory  
40 compliance with federal or State law;

41 (2) in accordance with section 5 of this act, pursuant to a request  
42 for disclosure. In the case of information about a student, the  
43 request for disclosure shall be from the student's parent or guardian  
44 and in the case of information about a student's parent or guardian  
45 or another user of the school service, the request for disclosure shall  
46 be from the parent or guardian or the other user, as the case may be;

47 (3) in accordance with section 5 of this act, pursuant to a request  
48 for disclosure from a student who is or has been enrolled in a high

1 school or from the student's parent or guardian for the exclusive  
2 purpose of: providing or authenticating the student's transcript,  
3 standardized test scores, letters of recommendation, or other  
4 information required by an institution of higher education for an  
5 application for admission or by a potential employer for an  
6 application for employment; or providing information relating to  
7 admission to an institution of higher education or a scholarship or  
8 financial aid for attendance at an institution of higher education;

9 (4) to protect the safety of users or others, or the security of the  
10 school service;

11 (5) to a public or nonpublic school, as permitted by federal and  
12 State law; or

13 (6) to a third-party service provider of the operator, and the  
14 operator contractually: prohibits the service provider from using  
15 any covered information for any purpose other than providing the  
16 contracted service to, or on behalf of, the operator; prohibits the  
17 service provider from disclosing to subsequent third parties any  
18 covered information disclosed by the operator to the service  
19 provider; and requires the service provider to establish, implement,  
20 and maintain reasonable security procedures in accordance with  
21 security practices established pursuant to subsection a. of section 4  
22 of this act.

23  
24 4. An operator shall:

25 a. establish, implement, and maintain reasonable security  
26 procedures appropriate to the nature of covered information to  
27 protect the confidentiality, security, and integrity of covered  
28 information;

29 b. delete a student's covered information, except for  
30 information that is required to be maintained by federal or State  
31 law, within a reasonable time, not to exceed 45 days, after receiving  
32 a request from a public or nonpublic school serving the student, or a  
33 request, either directly or through the public or nonpublic school,  
34 from the student's parent or guardian, except in the case of  
35 information that is included in a mandated student record or that is  
36 directed by the public or nonpublic school to be maintained for  
37 educational or administrative purposes;

38 c. disclose publicly and to each public or nonpublic school to  
39 which the operator provides a school service, in contracts or privacy  
40 policies in a manner that is clear and easy to understand, the types  
41 of covered information collected or generated, if any, the purposes  
42 for which the covered information is used or disclosed to third  
43 parties, and the identity of any such third party;

44 d. facilitate access to and correction of covered information,  
45 either directly or through a public or nonpublic school, in the case  
46 of information about a student, by the student's parent or guardian,  
47 or in the case of information about a parent or guardian or another

- 1 user of the school service, by the parent or guardian or the other  
2 user, as the case may be;
- 3 e. implement policies and procedures for responding to data  
4 breaches involving unauthorized acquisition of or access to  
5 personally identifiable information that occur on a school service, in  
6 compliance with any obligations imposed by federal or State law;
- 7 f. notify the Department of Education and, as appropriate,  
8 students, parents or guardians, public and nonpublic schools, or  
9 personnel of the school, including teachers, of each data breach  
10 involving unauthorized acquisition of or access to personally  
11 identifiable information that occurs on a school service, in  
12 compliance with any obligations imposed by federal or State law;  
13 and
- 14 g. delete any covered information maintained by a school  
15 service, except for information that is required to be maintained by  
16 federal or State law:
- 17 (1) within a reasonable time, not to exceed one year, after the  
18 operator ceases to provide the service to the public or nonpublic  
19 school, unless the information is required to be maintained at the  
20 direction of the public or nonpublic school, or the student's parent  
21 or guardian; or
- 22 (2) if the operator continues providing the service in whole or in  
23 part to a student after ceasing to provide the service to the public or  
24 nonpublic school, within a reasonable time, not to exceed one year,  
25 after the operator ceases to provide the service to the student, unless  
26 the information is required to be maintained at the direction of the  
27 student's parent or guardian.
- 28
- 29 5. a. An operator may disclose covered information under  
30 paragraphs (2) and (3) of subsection e. of section 3 of this act only  
31 after the operator:
- 32 (1) receives from the requesting party, an affirmative express  
33 request, whether made directly or through a public or nonpublic  
34 school serving the student, to disclose information specified in the  
35 request;
- 36 (2) provides to the requesting party, in a manner that is clear and  
37 easy to understand, a description of the types of covered  
38 information that will be disclosed to a third party, any fees collected  
39 by the operator to cover administrative costs, and the purposes for  
40 which the covered information will be disclosed to and used by the  
41 third party;
- 42 (3) ensures that the third party agrees, in writing or an electronic  
43 equivalent: not to use any covered information received pursuant to  
44 the request for any purpose other than fulfilling the purpose for  
45 which the request was made; not to disclose to subsequent third  
46 parties any covered information received pursuant to the request;  
47 and to establish, implement, and maintain reasonable security

1 procedures in accordance with security practices established  
2 pursuant to subsection a. of section 4 of this act; and

3 (4) provides a readily available mechanism for the requesting  
4 party to revoke the request.

5 b. As used in this section, “requesting party” means the  
6 student, the student’s parent or guardian, or other user of the school  
7 service.

8

9 6. a. Nothing in this act shall prohibit an operator from:

10 (1) using de-identified and aggregated covered information  
11 within the operator’s school service or other sites, services, or  
12 applications owned by the operator to improve educational  
13 products, or to demonstrate the effectiveness of the operator’s  
14 products or services, including in the marketing of the products or  
15 services; or

16 (2) disclosing de-identified and aggregated covered information  
17 for research and development, including research, development, and  
18 improvement of educational sites, services, and applications, and  
19 advancements in the science of learning.

20 b. If an operator uses or discloses covered information as  
21 described in subsection a. of this section, the operator shall take  
22 reasonable steps to ensure that the information cannot be  
23 manipulated in a manner that would enable identification of an  
24 individual to whom the information relates, or disaggregation of  
25 aggregated information into its component parts.

26

27 7. The prohibitions of this act on the sale and disclosure of  
28 covered information shall not apply to the merger of an operator  
29 with another entity or the acquisition of the operator by another  
30 entity, including any subsequent merger or acquisition, provided  
31 that the operator or successor entity continues to be subject to the  
32 provisions of this act with respect to covered information acquired  
33 before the merger or acquisition.

34

35 8. This act shall continue to apply, after a student is no longer  
36 enrolled in a public or nonpublic school, to covered information  
37 relating to the student that was collected or generated while the  
38 student was enrolled.

39

40 9. Nothing in this act shall be construed to:

41 a. limit the authority of a law enforcement agency to obtain  
42 content or information from an operator as authorized by law or  
43 pursuant to an order of a court of competent jurisdiction;

44 b. limit the ability of an operator to use information, including  
45 covered information, for adaptive or personalized student learning  
46 purposes;

- 1 c. limit a public or nonpublic school from providing Internet  
2 access service for its own use, to other public or nonpublic schools,  
3 or to students and their families;
- 4 d. prohibit an operator's use of covered information for  
5 maintaining, developing, supporting, improving, or diagnosing the  
6 operator's school service;
- 7 e. prohibit an operator of a school service from marketing  
8 educational products directly to parents or guardians, provided that  
9 the marketing does not result from the use of covered information;
- 10 f. impose a duty upon a provider of an electronic store,  
11 gateway, marketplace, or other means of purchasing or  
12 downloading software or applications to review or enforce  
13 compliance with this act by operators of school services;
- 14 g. impede the ability of a student or the student's parent or  
15 guardian to download, export, create, or otherwise save or maintain  
16 data or documents created by or about the student or  
17 noncommercial applications created by the student, except to the  
18 extent that this activity would result in disclosures prohibited by  
19 this act of covered information of other students or users of a school  
20 service; or
- 21 h. prohibit an operator from collecting a reasonable fee to  
22 cover the administrative costs of making a disclosure under  
23 paragraph (3) of subsection e. of section 3 of this act.  
24
- 25 10. Any provision of this act that refers to the consent of the  
26 student's parent or guardian for the use or disclosure of covered  
27 information or the right of the student's parent or guardian to access  
28 or otherwise obtain, use, correct, request disclosure of, or request  
29 deletion of, covered information, shall, in the case of covered  
30 information about a student who is 18 years of age or older, be  
31 considered to refer to the consent or right of the student and not the  
32 student's parent or guardian.  
33
- 34 11. a. The Commissioner of Education shall provide public and  
35 nonpublic schools with guidance and technical assistance with  
36 respect to preventing and responding to data breaches involving  
37 unauthorized acquisition of or access to personally identifiable  
38 information that occur on a school service, in compliance with any  
39 obligations imposed by federal or State law.
- 40 b. No later than one year after the effective date of this act and  
41 annually thereafter, the commissioner shall submit to the Governor  
42 and the Legislature pursuant to section 2 of P.L.1991, c.164  
43 (C.52:14-19.1), a report on the number, scope, and nature of the  
44 data breaches about which the department receives notice pursuant  
45 to subsection f. of section 4 of this act.

13. This act shall take effect immediately.

This bill is entitled the “Student Digital Privacy and Parental Rights Act.” The bill concerns student information collected or generated by a school service which is defined in the bill to mean an Internet Web site, online service, online application, or mobile application that is used to aid in the administration of activities of public or nonpublic schools and that is designed and marketed for those purposes. Under the provisions of the bill an operator of a school service is prohibited from:

- presenting students or parents with targeted advertisements that are selected based on information obtained or inferred from the students' online behavior or use of online or mobile applications, or personally identifiable information about the student maintained by the operator;
- selling a student's personally identifiable information to third parties or collecting this information for purposes unrelated to educational instruction; and
- disclosing a student's personally identifiable information except in the specific instances outlined in the bill and in accordance with rules prescribed in the bill.

- disclosing publicly and to public and nonpublic schools to which the operator provides a school service, the types of personal information the operator collects or generates, the purposes for which information is used or disclosed to third parties, and the identity of these third parties;

- establishing procedures for parents and system users to access and correct certain information;
- establishing, implementing, and maintaining security procedures to protect the confidentiality, security, and integrity of student information;
- deleting certain student information within a specified timeframe upon the request of the public or nonpublic school serving the student or a request from the student's parent;
- deleting student information within a specified timeframe after the operator ceases to provide the service to the public or nonpublic school; and



- 1     • implementing policies and procedures to respond to data  
2 breaches, including notifying the Department of Education and, as  
3 appropriate, students, parents, and public or nonpublic schools of  
4 the breach.
- 5     The bill requires the Commissioner of Education to provide  
6 public and nonpublic schools with guidance and technical assistance  
7 with respect to preventing and responding to data breaches  
8 involving unauthorized acquisition of or access to students'  
9 personally identifiable information. The commissioner is also  
10 required to submit a report annually to the Governor and the  
11 Legislature on the number, scope, and nature of the data breaches  
12 about which the department receives notice from operators in  
13 accordance with the bill's provisions.