

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Student Online Personal Protection Act is
5 amended by changing Sections 5, 10, and 15 and by adding
6 Sections 26, 27, 28, and 33 as follows:

7 (105 ILCS 85/5)

8 Sec. 5. Definitions. In this Act:

9 "Breach" means the unauthorized disclosure of data or
10 unauthorized provision of physical or electronic means of
11 gaining access to data that compromises the security,
12 confidentiality, or integrity of covered information.

13 "Covered information" means personally identifiable
14 information or material or information that is linked to
15 personally identifiable information or material in any media or
16 format that is not publicly available and is any of the
17 following:

18 (1) Created by or provided to an operator by a student
19 or the student's parent or legal guardian in the course of
20 the student's, parent's, or legal guardian's use of the
21 operator's site, service, or application for K through 12
22 school purposes.

23 (2) Created by or provided to an operator by an

1 employee or agent of a school or school district for K
2 through 12 school purposes.

3 (3) Gathered by an operator through the operation of
4 its site, service, or application for K through 12 school
5 purposes and personally identifies a student, including,
6 but not limited to, information in the student's
7 educational record or electronic mail, first and last name,
8 home address, telephone number, electronic mail address,
9 or other information that allows physical or online
10 contact, discipline records, test results, special
11 education data, juvenile dependency records, grades,
12 evaluations, criminal records, medical records, health
13 records, a social security number, biometric information,
14 disabilities, socioeconomic information, food purchases,
15 political affiliations, religious information, text
16 messages, documents, student identifiers, search activity,
17 photos, voice recordings, or geolocation information.

18 "Interactive computer service" has the meaning ascribed to
19 that term in Section 230 of the federal Communications Decency
20 Act of 1996 (47 U.S.C. 230).

21 "K through 12 school purposes" means purposes that are
22 directed by or that customarily take place at the direction of
23 a school, teacher, or school district; aid in the
24 administration of school activities, including, but not
25 limited to, instruction in the classroom or at home,
26 administrative activities, and collaboration between students,

1 school personnel, or parents; or are otherwise for the use and
2 benefit of the school.

3 "Longitudinal data system" has the meaning given to that
4 term under the P-20 Longitudinal Education Data System Act.

5 "Operator" means, to the extent that an entity is operating
6 in this capacity, the operator of an Internet website, online
7 service, online application, or mobile application with actual
8 knowledge that the site, service, or application is used
9 primarily for K through 12 school purposes and was designed and
10 marketed for K through 12 school purposes.

11 "Parent" has the meaning given to that term under the
12 Illinois School Student Records Act.

13 "School" means (1) any preschool, public kindergarten,
14 elementary or secondary educational institution, vocational
15 school, special educational facility, or any other elementary
16 or secondary educational agency or institution or (2) any
17 person, agency, or institution that maintains school student
18 records from more than one school. Except as otherwise provided
19 in this Act, "school" ~~"School"~~ includes a private or nonpublic
20 school.

21 "State Board" means the State Board of Education.

22 "Student" has the meaning given to that term under the
23 Illinois School Student Records Act.

24 "Targeted advertising" means presenting advertisements to
25 a student where the advertisement is selected based on
26 information obtained or inferred ~~over time~~ from that student's

1 online behavior, usage of applications, or covered
2 information. The term does not include advertising to a student
3 at an online location based upon that student's current visit
4 to that location or in response to that student's request for
5 information or feedback, without the retention of that
6 student's online activities or requests over time for the
7 purpose of targeting subsequent ads.

8 (Source: P.A. 100-315, eff. 8-24-17.)

9 (105 ILCS 85/10)

10 Sec. 10. Operator prohibitions. An operator shall not
11 knowingly do any of the following:

12 (1) Engage in targeted advertising on the operator's
13 site, service, or application or target advertising on any
14 other site, service, or application if the targeting of the
15 advertising is based on any information, including covered
16 information and persistent unique identifiers, that the
17 operator has acquired because of the use of that operator's
18 site, service, or application for K through 12 school
19 purposes.

20 (2) Use information, including persistent unique
21 identifiers, created or gathered by the operator's site,
22 service, or application to amass a profile about a student,
23 except in furtherance of K through 12 school purposes.
24 "Amass a profile" does not include the collection and
25 retention of account information that remains under the

1 control of the student, the student's parent or legal
2 guardian, or the school.

3 (3) Sell or rent a student's information, including
4 covered information. This subdivision (3) does not apply to
5 the purchase, merger, or other type of acquisition of an
6 operator by another entity if the operator or successor
7 entity complies with this Act regarding previously
8 acquired student information.

9 (4) Except as otherwise provided in Section 20 of this
10 Act, disclose covered information, unless the disclosure
11 is made for the following purposes:

12 (A) In furtherance of the K through 12 school
13 purposes of the site, service, or application if the
14 recipient of the covered information disclosed under
15 this clause (A) does not further disclose the
16 information, unless done to allow or improve
17 operability and functionality of the operator's site,
18 service, or application.

19 (B) To ensure legal and regulatory compliance or
20 take precautions against liability.

21 (C) To respond to the judicial process.

22 (D) To protect the safety or integrity of users of
23 the site or others or the security of the site,
24 service, or application.

25 (E) For a school, educational, or employment
26 purpose requested by the student or the student's

1 parent or legal guardian, provided that the
2 information is not used or further disclosed for any
3 other purpose.

4 (F) To a third party if the operator contractually
5 prohibits the third party from using any covered
6 information for any purpose other than providing the
7 contracted service to or on behalf of the operator,
8 prohibits the third party from disclosing any covered
9 information provided by the operator with subsequent
10 third parties, and requires the third party to
11 implement and maintain ~~reasonable~~ security procedures
12 and practices as required under Section 15.

13 Nothing in this Section prohibits the operator's use of
14 information for maintaining, developing, supporting,
15 improving, or diagnosing the operator's site, service, or
16 application.

17 (Source: P.A. 100-315, eff. 8-24-17.)

18 (105 ILCS 85/15)

19 Sec. 15. Operator duties. An operator shall do the
20 following:

21 (1) Implement and maintain ~~reasonable~~ security
22 procedures and practices ~~appropriate to the nature of the~~
23 ~~covered information and~~ designed to protect ~~that~~ covered
24 information from unauthorized access, destruction, use,
25 modification, or disclosure that, based on the sensitivity

1 of the data and the risk from unauthorized access, (i) use
2 technologies and methodologies that are consistent with
3 the U.S. Department of Commerce's National Institute of
4 Standards and Technology's Framework for Improving
5 Critical Infrastructure Cybersecurity Version 1.1 and any
6 updates to it or (ii) maintain technical safeguards as they
7 relate to the possession of covered information in a manner
8 consistent with the provisions of 45 CFR 164.312.

9 (2) Delete, within a reasonable time period, a
10 student's covered information if the school or school
11 district requests deletion of covered information under
12 the control of the school or school district, unless a
13 student or his or her parent or legal guardian consents to
14 the maintenance of the covered information.

15 (3) Publicly disclose material information about its
16 collection, use, and disclosure of covered information,
17 including, but not limited to, publishing a terms of
18 service agreement, privacy policy, or similar document.

19 (4) Except for a nonpublic school, for any operator who
20 seeks to receive from a school, school district, or the
21 State Board in any manner any covered information, enter
22 into a written agreement with the school, school district,
23 or State Board before the covered information may be
24 transferred. The written agreement may be created in
25 electronic form and signed with an electronic or digital
26 signature or may be a click wrap agreement that is used

1 with software licenses, downloaded or online applications
2 and transactions for educational technologies, or other
3 technologies in which a user must agree to terms and
4 conditions before using the product or service. The written
5 agreement must contain all of the following:

6 (A) A listing of the categories or types of covered
7 information to be provided to the operator.

8 (B) A statement of the product or service being
9 provided to the school by the operator.

10 (C) A statement that the operator is acting as a
11 school official with a legitimate educational
12 interest, is performing an institutional service or
13 function for which the school would otherwise use
14 employees, under the direct control of the school, with
15 respect to the use and maintenance of covered
16 information, and is using the covered information only
17 for an authorized purpose and may not re-disclose it to
18 third parties or affiliates, unless otherwise
19 permitted under this Act, without permission from the
20 school or pursuant to court order.

21 (D) A description of how, if a breach is attributed
22 to the operator, any costs and expenses incurred by the
23 school in investigating and remediating the breach
24 will be allocated between the operator and the school.
25 The costs and expenses may include, but are not limited
26 to:

1 (i) providing notification to the parents of
2 those students whose covered information was
3 compromised and to regulatory agencies or other
4 entities as required by law or contract;

5 (ii) providing credit monitoring to those
6 students whose covered information was exposed in
7 a manner during the breach that a reasonable person
8 would believe that it could impact his or her
9 credit or financial security;

10 (iii) legal fees, audit costs, fines, and any
11 other fees or damages imposed against the school as
12 a result of the security breach; and

13 (iv) providing any other notifications or
14 fulfilling any other requirements adopted by the
15 State Board or of any other State or federal laws.

16 (E) A statement that the operator must delete or
17 transfer to the school all covered information if the
18 information is no longer needed for the purposes of the
19 written agreement and to specify the time period in
20 which the information must be deleted or transferred
21 once the operator is made aware that the information is
22 no longer needed for the purposes of the written
23 agreement.

24 (F) A statement that the school must publish the
25 written agreement on the school's website. If mutually
26 agreed upon by the school and the operator, provisions

1 of the written agreement, other than those under
2 subparagraphs (A), (B), and (C), may be redacted in the
3 copy of the written agreement published on the school's
4 website.

5 (5) In case of any breach, within the most expedient
6 time possible and without unreasonable delay, but no later
7 than 30 calendar days after the determination that a breach
8 has occurred, notify the school of any breach of the
9 students' covered information.

10 (Source: P.A. 100-315, eff. 8-24-17.)

11 (105 ILCS 85/26 new)

12 Sec. 26. School prohibitions. A school may not do either of
13 the following:

14 (1) Sell, rent, lease, or trade covered information.

15 (2) Share, transfer, disclose, or provide access to a
16 student's covered information to an entity or individual,
17 other than the student's parent or the State Board, without
18 a written agreement, unless the disclosure or transfer is:

19 (A) to the extent permitted by federal law, to law
20 enforcement officials to protect the safety of users or
21 others or the security or integrity of the operator's
22 service;

23 (B) required by court order or State or federal
24 law; or

25 (C) to ensure legal or regulatory compliance.

1 This paragraph (2) does not apply to nonpublic schools.

2 (105 ILCS 85/27 new)

3 Sec. 27. School duties.

4 (a) Each school shall post and maintain on its website all
5 of the following information:

6 (1) An explanation, that is clear and understandable by
7 a layperson, of the data elements of covered information
8 that the school collects, maintains, or discloses to any
9 person, entity, third party, or governmental agency. The
10 information must explain how the school uses, to whom or
11 what entities it discloses, and for what purpose it
12 discloses the covered information.

13 (2) A list of operators that the school has written
14 agreements with, a copy of each written agreement, and a
15 business address for each operator.

16 (3) For each operator, a list of any subcontractors to
17 whom covered information may be disclosed under Section 15.

18 (4) A written description of the procedures that a
19 parent may use to carry out the rights enumerated under
20 Section 33.

21 (5) A list of any breaches of covered information
22 maintained by the school or breaches under Section 15 that
23 includes, but is not limited to, all of the following
24 information:

25 (A) The number of students whose covered

1 information is involved in the breach.

2 (B) The date, estimated date, or estimated date
3 range of the breach.

4 (C) For a breach under Section 15, the name of the
5 operator.

6 The school must, at a minimum, update the items under
7 paragraphs (1), (3), (4), and (5) no later than 30 calendar
8 days following the start of a school year and no later than 30
9 days following the beginning of a calendar year.

10 (b) Each school must adopt a policy designating which
11 school employees are authorized to enter into written
12 agreements with operators. This subsection may not be construed
13 to limit individual school employees outside of the scope of
14 their employment from entering into agreements with operators
15 on their own behalf and for non-K through 12 school purposes,
16 provided that no covered information is provided to the
17 operators. Any agreement or contract entered into in violation
18 of this Act is void and unenforceable as against public policy.

19 (c) A school must post on its website each written
20 agreement entered into under this Act, along with any
21 information required under subsection (a), no later than 5
22 business days after entering into the agreement.

23 (d) After receipt of notice of a breach under Section 15 or
24 determination of a breach of covered information maintained by
25 the school, a school shall electronically notify, no later than
26 30 calendar days after receipt of the notice or determination

1 that a breach has occurred, the parent of any student whose
2 covered information is involved in the breach. The notification
3 must include, but is not limited to, all of the following:

4 (1) The date, estimated date, or estimated date range
5 of the breach.

6 (2) A description of the covered information that was
7 compromised or reasonably believed to have been
8 compromised in the breach.

9 (3) Information that the parent may use to contact the
10 operator and school to inquire about the breach.

11 (4) The toll-free numbers, addresses, and websites for
12 consumer reporting agencies.

13 (5) The toll-free number, address, and website for the
14 Federal Trade Commission.

15 (6) A statement that the parent may obtain information
16 from the Federal Trade Commission and consumer reporting
17 agencies about fraud alerts and security freezes.

18 (e) Each school must implement and maintain security
19 procedures and practices designed to protect covered
20 information from unauthorized access, destruction, use,
21 modification, or disclosure that, based on the sensitivity of
22 the covered information and the risk from unauthorized access,
23 (i) use technologies and methodologies that are consistent with
24 the U.S. Department of Commerce's National Institute of
25 Standards and Technology's Framework for Improving Critical
26 Infrastructure Cybersecurity Version 1.1 and any updates to it

1 or (ii) maintain technical safeguards as they relate to the
2 possession of student records in a manner consistent with the
3 provisions of 45 CFR 164.312.

4 (f) Each school shall designate an appropriate staff person
5 as a privacy officer, who may also be an official records
6 custodian as designated under the Illinois School Student
7 Records Act, to carry out the duties and responsibilities
8 assigned to schools and to ensure compliance with the
9 requirements of this Section and Section 26.

10 (g) A school shall make a request, pursuant to paragraph
11 (2) of Section 15, to an operator to delete covered information
12 on behalf of a student's parent if the parent requests from the
13 school that the student's covered information held by the
14 operator be deleted, so long as the deletion of the covered
15 information is not in violation of the Illinois School Student
16 Records Act.

17 (h) This Section does not apply to nonpublic schools.

18 (105 ILCS 85/28 new)

19 Sec. 28. State Board duties.

20 (a) The State Board may not sell, rent, lease, or trade
21 covered information.

22 (b) The State Board may not share, transfer, disclose, or
23 provide covered information to an entity or individual without
24 a contract or written agreement, except for disclosures
25 required by federal law to federal agencies.

1 (c) At least twice annually, the State Board must publish
2 and maintain on its website a list of all of the entities or
3 individuals, including, but not limited to, operators,
4 individual researchers, research organizations, institutions
5 of higher education, or government agencies, that the State
6 Board contracts with or has agreements with and that hold
7 covered information and a copy of each contract or agreement.
8 The list must include all of the following information:

9 (1) The name of the entity or individual. In naming an
10 individual, the list must include the entity that sponsors
11 the individual or with which the individual is affiliated,
12 if any. If the individual is conducting research at an
13 institution of higher education, the list may include the
14 name of that institution and a contact person in the
15 department that is associated with the research in lieu of
16 the name of the researcher. If the entity is an operator,
17 the list must include its business address.

18 (2) The purpose and scope of the contract or agreement.

19 (3) The duration of the contract or agreement.

20 (4) The types of covered information that the entity or
21 individual holds under the contract or agreement.

22 (5) The use of the covered information under the
23 contract or agreement.

24 (6) The length of time for which the entity or
25 individual may hold the covered information.

26 (7) A list of any subcontractors to whom covered

1 information may be disclosed under Section 15.

2 (d) The State Board shall create, publish, and make
3 publicly available an inventory, along with a dictionary or
4 index of data elements and their definitions, of covered
5 information collected or maintained by the State Board,
6 including, but not limited to, both of the following:

7 (1) Covered information that schools are required to
8 report to the State Board by State or federal law.

9 (2) Covered information in the State longitudinal data
10 system or any data warehouse used by the State Board to
11 populate the longitudinal data system.

12 The inventory shall make clear for what purposes the State
13 Board uses the covered information.

14 (e) The State Board shall develop, publish, and make
15 publicly available, for the benefit of schools, model student
16 data privacy policies and procedures that comply with relevant
17 State and federal law, including, but not limited to, a model
18 notice that schools must use to provide notice to parents and
19 students about operators. The notice must state, in general
20 terms, the types of student data that are collected by the
21 schools and shared with operators under this Act and the
22 purposes of collecting and using the student data. After
23 creation of the notice under this subsection, a school shall,
24 at the beginning of each school year, provide the notice to
25 parents by the same means generally used to send notices to
26 them. This subsection does not apply to nonpublic schools.

1 (105 ILCS 85/33 new)

2 Sec. 33. Parent and student rights.

3 (a) A student's covered information is the sole property of
4 the student's parent.

5 (b) A student's covered information shall be collected only
6 for K through 12 school purposes and not further processed in a
7 manner that is incompatible with those purposes.

8 (c) A student's covered information shall only be adequate,
9 relevant, and limited to what is necessary in relation to the K
10 through 12 school purposes for which it is processed.

11 (d) Except for a parent of a student enrolled in a
12 nonpublic school, the parent of a student enrolled in a school
13 has the right to all of the following:

14 (1) Inspect and review the student's covered
15 information, regardless of whether it is maintained by the
16 school, the State Board, or an operator.

17 (2) Request from a school a paper or electronic copy of
18 the student's covered information, including covered
19 information maintained by an operator or the State Board.
20 If a parent requests an electronic copy of the student's
21 covered information under this paragraph, the school must
22 provide an electronic copy of that information, unless the
23 school does not maintain the information in an electronic
24 format and reproducing the information in an electronic
25 format would be unduly burdensome to the school. If a

1 parent requests a paper copy of the student's covered
2 information, the school may charge the parent the
3 reasonable cost for copying the information in an amount
4 not to exceed the amount fixed in a schedule adopted by the
5 State Board, except that no parent may be denied a copy of
6 the information due to the parent's inability to bear the
7 cost of the copying. The State Board must adopt rules on
8 the methodology and frequency of requests under this
9 paragraph.

10 (3) Request corrections of factual inaccuracies
11 contained in the student's covered information. After
12 receiving a request for corrections that documents a
13 factual inaccuracy, a school must do either of the
14 following:

15 (A) Confirm the correction with the parent within
16 90 calendar days after receiving the parent's request
17 if the school or State Board maintains the covered
18 information that contains the factual inaccuracy.

19 (B) Notify the operator who must confirm the
20 correction with the parent within 90 calendar days
21 after receiving the parent's request if the covered
22 information that contains the factual inaccuracy is
23 maintained by an operator.

24 (e) Nothing in this Section shall be construed to limit the
25 rights granted to parents and students under the Illinois
26 School Student Records Act.

1 Section 99. Effective date. This Act takes effect July 1,
2 2021.