



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2256

Introduced 2/10/2023, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

105 ILCS 85/5
105 ILCS 85/15
105 ILCS 85/25
105 ILCS 85/26
105 ILCS 85/27
105 ILCS 85/30

Amends the Student Online Personal Protection Act. Provides that "covered information" does not include de-identified or aggregate information from which all personally identifiable information of a student has been removed. Makes conforming changes. Provides that the covered information restrictions shall be included as part of the operator's terms of service agreement, privacy policy, or similar document (instead of requiring that an operator enter into a written agreement with the school, school district, or State Board before the covered information may be transferred) Removes provisions requiring that if the school maintains a website, a the operator shall provide a statement that the school must publish the written agreement on the school's website. Makes related changes. Provides that a statement that the operator will implement and maintain reasonable security procedures and practices that otherwise meet or exceed industry standards designed to protect covered information from unauthorized access, destruction, use, modification, or disclosure Provides that the business address of the operator and a link to the terms of service agreement, privacy policy, or similar document shall be provided. Provides that de-identified or aggregate information from which all personally identifiable information of a student has been removed are not prohibited for an operator to use. Removes restrictions prohibiting a school from sharing, transferring, disclosing, or providing access to a students covered information to an entity of individual. Makes other changes.

LRB103 27298 RJT 53669 b

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, 15, 25, 26, 27 and 30 as
6 follows:

7 (105 ILCS 85/5)

8 Sec. 5. Definitions. In this Act:

9 "Breach" means the unauthorized acquisition of
10 computerized data that compromises the security,
11 confidentiality, or integrity of covered information
12 maintained by an operator or school. "Breach" does not include
13 the good faith acquisition of covered ~~personal~~ information by
14 an employee or agent of an operator or school for a legitimate
15 purpose of the operator or school if the covered information
16 is not used for a purpose prohibited by this Act or subject to
17 further unauthorized disclosure.

18 "Covered information" means personally identifiable
19 information or material of a student or information that is
20 linked to personally identifiable information or material in
21 any media or format that is not publicly available and is any
22 of the following:

23 (1) Created by or provided to an operator by a student

1 or the student's parent in the course of the student's or
2 parent's use of the operator's site, service, or
3 application for K through 12 school purposes.

4 (2) Created by or provided to an operator by an
5 employee or agent of a school or school district for K
6 through 12 school purposes.

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

22 The term does not include de-identified or aggregate
23 information from which all personally identifiable information
24 of a student has been removed.

25 "Interactive computer service" has the meaning ascribed to
26 that term in Section 230 of the federal Communications Decency

1 Act of 1996 (47 U.S.C. 230).

2 "K through 12 school purposes" means purposes that are
3 directed by or that customarily take place at the direction of
4 a school, teacher, or school district; aid in the
5 administration of school activities, including, but not
6 limited to, instruction in the classroom or at home,
7 administrative activities, and collaboration between students,
8 school personnel, or parents; or are otherwise for the use and
9 benefit of the school.

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

12 "Operator" means, to the extent that an entity is
13 operating in this capacity, the operator of an Internet
14 website, online service, online application, or mobile
15 application with actual knowledge that the site, service, or
16 application is used primarily for K through 12 school purposes
17 and was designed and marketed for K through 12 school
18 purposes.

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

21 "School" means (1) any preschool, public kindergarten,
22 elementary or secondary educational institution, vocational
23 school, special educational facility, or any other elementary
24 or secondary educational agency or institution or (2) any
25 person, agency, or institution that maintains school student
26 records from more than one school. Except as otherwise

1 provided in this Act, "school" includes a private or nonpublic
2 school.

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

4 "Student" has the meaning given to that term under the
5 Illinois School Student Records Act.

6 "Targeted advertising" means presenting advertisements to
7 a student where the advertisement is selected based on
8 information obtained or inferred from that student's online
9 behavior, usage of applications, or covered information. The
10 term does not include advertising to a student at an online
11 location based upon that student's current visit to that
12 location or in response to that student's request for
13 information or feedback, without the retention of that
14 student's online activities or requests over time for the
15 purpose of targeting subsequent ads.

16 (Source: P.A. 100-315, eff. 8-24-17; 101-516, eff. 7-1-21.)

17 (105 ILCS 85/15)

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

20 (1) Implement and maintain reasonable security
21 procedures and practices that otherwise meet or exceed
22 industry standards designed to protect covered information
23 from unauthorized access, destruction, use, modification,
24 or disclosure.

25 (2) Delete, within a reasonable time period, a

1 student's covered information if the school or school
2 district requests deletion of covered information under
3 the control of the school or school district, unless a
4 student or his or her parent consents to the maintenance
5 of the covered information.

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

10 (4) Except for a nonpublic school, for any operator
11 who receives ~~seeks to receive~~ from a public school, school
12 district, or the State Board in any manner any covered
13 information, must include as part of their service
14 agreement, privacy policy, or similar document the
15 following: ~~enter into a written agreement with the school,~~
16 ~~school district, or State Board before the covered~~
17 ~~information may be transferred. The written agreement may~~
18 ~~be created in electronic form and signed with an~~
19 ~~electronic or digital signature or may be a click wrap~~
20 ~~agreement that is used with software licenses, downloaded~~
21 ~~or online applications and transactions for educational~~
22 ~~technologies, or other technologies in which a user must~~
23 ~~agree to terms and conditions before using the product or~~
24 ~~service. Any written agreement entered into, amended, or~~
25 ~~renewed must contain all of the following:~~

26 (A) A listing of the categories or types of

1 covered information to be provided by the school to
2 the operator.

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

5 (C) A statement that, pursuant to the federal
6 Family Educational Rights and Privacy Act of 1974, the
7 operator is acting as a school official with a
8 legitimate educational interest, is performing an
9 institutional service or function for which the school
10 would otherwise use employees, under the direct
11 control of the school, with respect to the use and
12 maintenance of covered information, and is using the
13 covered information only for an authorized purpose and
14 may not re-disclose it to third parties or affiliates,
15 unless otherwise permitted under this Act, without
16 permission from the school or pursuant to court order.

17 (D) A statement that ~~description of how~~, if a
18 breach is attributed to the operator, any costs and
19 expenses incurred by the school in investigating and
20 remediating the breach will be allocated to ~~between~~
21 the operator ~~and the school~~. The costs and expenses
22 shall ~~may~~ include, but are not limited to:

23 (i) providing notification to the parents of
24 those students whose covered information was
25 compromised and to regulatory agencies or other
26 entities as required by law or contract;

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

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

9 (iv) providing any other notifications or
10 fulfilling any other requirements adopted by the
11 State Board or of any other State or federal laws.

12 (E) A statement that the operator must delete or
13 transfer to the school all covered information if the
14 information is no longer needed for the purposes of
15 the school's use of the operator's site, service, or
16 application ~~the written agreement~~ and to specify the
17 time period in which the information must be deleted
18 or transferred once the operator is made aware that
19 the information is no longer needed for the purposes
20 of the school's use of the operator's site, service,
21 or application ~~written agreement~~.

22 (F) (Blank) ~~If the school maintains a website, a~~
23 ~~statement that the school must publish the written~~
24 ~~agreement on the school's website. If the school does~~
25 ~~not maintain a website, a statement that the school~~
26 ~~must make the written agreement available for~~

1 ~~inspection by the general public at its administrative~~
2 ~~office. If mutually agreed upon by the school and the~~
3 ~~operator, provisions of the written agreement, other~~
4 ~~than those under subparagraphs (A), (B), and (C), may~~
5 ~~be redacted in the copy of the written agreement~~
6 ~~published on the school's website or made available at~~
7 ~~its administrative office.~~

8 (G) A statement that the operator will implement
9 and maintain reasonable security procedures and
10 practices that otherwise meet or exceed industry
11 standards designed to protect covered information from
12 unauthorized access, destruction, use, modification,
13 or disclosure.

14 (H) The business address of the operator and a
15 link to the terms of service agreement, privacy
16 policy, or similar document.

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

22 (6) Except for a nonpublic school, ~~maintain provide to~~
23 ~~the school~~ a list of any third parties or affiliates to
24 whom the operator is currently disclosing covered
25 information or has disclosed covered information on its
26 site, service, or application. This list must, at a

1 minimum, be updated ~~and provided to the school~~ by the
2 beginning of each State fiscal year and at the beginning
3 of each calendar year.

4 (Source: P.A. 100-315, eff. 8-24-17; 101-516, eff. 7-1-21.)

5 (105 ILCS 85/25)

6 Sec. 25. Operator actions that are not prohibited. This
7 Act does not prohibit an operator from doing any of the
8 following:

9 (1) Using de-identified or aggregate information from
10 which all personally identifiable information of a student
11 has been removed ~~covered information~~ to improve
12 educational products ~~if that information is not associated~~
13 ~~with an identified student~~ within the operator's site,
14 service, or application or other sites, services, or
15 applications owned by the operator.

16 (2) Using de-identified or aggregate information from
17 which all personally identifiable information of a student
18 has been removed ~~covered information that is not~~
19 ~~associated with an identified student~~ to demonstrate the
20 effectiveness of the operator's products or services,
21 including in their marketing.

22 (3) Sharing de-identified or aggregate information
23 from which all personally identifiable information of a
24 student has been removed ~~covered information that is not~~
25 ~~associated with an identified student~~ for the development

1 and improvement of educational sites, services, or
2 applications.

3 (4) Using recommendation engines to recommend to a
4 student either of the following:

5 (A) Additional content relating to an educational,
6 other learning, or employment opportunity purpose
7 within an online site, service, or application if the
8 recommendation is not determined in whole or in part
9 by payment or other consideration from a third party.

10 (B) Additional services relating to an
11 educational, other learning, or employment opportunity
12 purpose within an online site, service, or application
13 if the recommendation is not determined in whole or in
14 part by payment or other consideration from a third
15 party.

16 (5) Responding to a student's request for information
17 or for feedback without the information or response being
18 determined in whole or in part by payment or other
19 consideration from a third party.

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

21 (105 ILCS 85/26)

22 Sec. 26. School prohibitions. A school may not ~~do either~~
23 ~~of the following:~~

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

25 (2) (Blank). ~~Share, transfer, disclose, or provide~~

~~access to a student's covered information to an entity or individual, other than the student's parent, school personnel, appointed or elected school board members or local school council members, or the State Board, without a written agreement, unless the disclosure or transfer is:~~

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

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

~~(C) to ensure legal or regulatory compliance.~~

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

(Source: P.A. 101-516, eff. 7-1-21.)

(105 ILCS 85/27)

Sec. 27. School duties.

(a) Each school shall post and maintain on its website or, if the school does not maintain a website, make available for inspection by the general public at its administrative office all of the following information:

(1) An explanation, that is clear and understandable by a layperson, of the data elements of covered information that the school collects, maintains, or discloses to any operator ~~person, entity, third party, or~~

1 ~~governmental agency.~~ The information must explain how the
2 school uses, to whom or what entities it discloses, and
3 for what purpose it discloses the covered information.

4 (2) A list of the operators of any educational sites,
5 services, or applications used by the school, ~~that the~~
6 ~~school has written agreements with, a copy of each written~~
7 ~~agreement, and~~ a business address for each operator, and a
8 link to each operator's terms of service, privacy policy,
9 or similar document. ~~A copy of a written agreement posted~~
10 ~~or made available by a school under this paragraph may~~
11 ~~contain redactions, as provided under subparagraph (F) of~~
12 ~~paragraph (4) of Section 15.~~

13 (3) For each operator, a ~~list of any subcontractors to~~
14 ~~whom covered information may be disclosed or~~ a link to a
15 page on the operator's website that clearly lists the ~~that~~
16 ~~information~~ third parties or affiliates to whom the
17 operator is currently disclosing covered information or
18 has disclosed covered information, as provided by the
19 operator to the school under paragraph (6) of Section 15.

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

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

1 (A) The number of students whose covered
2 information is involved in the breach, unless
3 disclosing that number would violate the provisions of
4 the Personal Information Protection Act.

5 (B) The date, estimated date, or estimated date
6 range of the breach.

7 (C) For a breach under Section 15, the name of the
8 operator.

9 The school may omit from the list required under this
10 paragraph (5): (i) any breach in which, to the best of the
11 school's knowledge at the time of updating the list, the
12 number of students whose covered information is involved
13 in the breach is less than 10% of the school's enrollment,
14 (ii) any breach in which, at the time of posting the list,
15 the school is not required to notify the parent of a
16 student under subsection (d), (iii) any breach in which
17 the date, estimated date, or estimated date range in which
18 it occurred is earlier than July 1, 2021, or (iv) any
19 breach previously posted on a list under this paragraph
20 (5) no more than 5 years prior to the school updating the
21 current list.

22 The school must, at a minimum, update the items under
23 paragraphs (1), (3), (4), and (5) no later than 30 calendar
24 days following the start of a fiscal year and no later than 30
25 days following the beginning of a calendar year.

26 (b) Each school must adopt a policy for designating which

1 school employees are authorized to enter into written
2 agreements with operators. This subsection may not be
3 construed to limit individual school employees outside of the
4 scope of their employment from entering into agreements with
5 operators on their own behalf and for non-K through 12 school
6 purposes, provided that no covered information is provided to
7 the operators. Any agreement or contract entered into in
8 violation of this Act is void and unenforceable as against
9 public policy.

10 (c) A school must post on its website or, if the school
11 does not maintain a website, make available at its
12 administrative office for inspection by the general public
13 each written agreement entered into under this Act, along with
14 any information required under subsection (a), no later than
15 10 business days after entering into the agreement.

16 (d) After receipt of notice of a breach under Section 15 or
17 determination of a breach of covered information maintained by
18 the school, a school shall notify, no later than 30 calendar
19 days after receipt of the notice or determination that a
20 breach has occurred, the parent of any student whose covered
21 information is involved in the breach. The notification must
22 include, but is not limited to, all of the following:

23 (1) The date, estimated date, or estimated date range
24 of the breach.

25 (2) A description of the covered information that was
26 compromised or reasonably believed to have been

1 compromised in the breach.

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

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

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

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

11 A notice of breach required under this subsection may be
12 delayed if an appropriate law enforcement agency determines
13 that the notification will interfere with a criminal
14 investigation and provides the school with a written request
15 for a delay of notice. A school must comply with the
16 notification requirements as soon as the notification will no
17 longer interfere with the investigation.

18 (e) Each school must implement and maintain reasonable
19 security procedures and practices that otherwise meet or
20 exceed industry standards designed to protect covered
21 information from unauthorized access, destruction, use,
22 modification, or disclosure. ~~Any written agreement under which~~
23 ~~the disclosure of covered information between the school and a~~
24 ~~third party takes place must include a provision requiring the~~
25 ~~entity to whom the covered information is disclosed to~~
26 ~~implement and maintain reasonable security procedures and~~

1 ~~practices that otherwise meet or exceed industry standards~~
2 ~~designed to protect covered information from unauthorized~~
3 ~~access, destruction, use, modification, or disclosure.~~ The
4 State Board must make available on its website a guidance
5 document for schools pertaining to reasonable security
6 procedures and practices under this subsection.

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

13 (g) A school shall make a request, pursuant to paragraph
14 (2) of Section 15, to an operator to delete covered
15 information on behalf of a student's parent if the parent
16 requests from the school that the student's covered
17 information held by the operator be deleted, so long as the
18 deletion of the covered information is not in violation of
19 State or federal records laws and the school has determined
20 the covered information is not needed to administer its
21 curriculum.

22 (h) This Section does not apply to nonpublic schools.
23 (Source: P.A. 101-516, eff. 7-1-21; 102-558, eff. 8-20-21.)

24 (105 ILCS 85/30)

25 Sec. 30. Applicability. This Act does not do any of the

1 following:

2 (1) Limit the authority of a law enforcement agency to
3 obtain any content or information from an operator as
4 authorized by law or under a court order.

5 (2) Limit the ability of an operator to use student
6 data, including covered information, for adaptive learning
7 or customized student learning purposes.

8 (3) Apply to general audience Internet websites,
9 general audience online services, general audience online
10 applications, or general audience mobile applications,
11 even if login credentials created for an operator's site,
12 service, or application may be used to access those
13 general audience sites, services, or applications.

14 (4) Limit service providers from providing Internet
15 connectivity to schools or students and their families.

16 (5) Prohibit an operator of an Internet website,
17 online service, online application, or mobile application
18 from marketing educational products directly to parents if
19 the marketing did not result from the use of covered
20 information obtained by the operator through the provision
21 of services covered under this Act.

22 (6) Impose a duty upon a provider of an electronic
23 store, gateway, marketplace, or other means of purchasing
24 or downloading software or applications to review or
25 enforce compliance with this Act on those applications or
26 software.

1 (7) Impose a duty upon a provider of an interactive
2 computer service to review or enforce compliance with this
3 Act by third-party content providers.

4 (8) Prohibit students from downloading, exporting,
5 transferring, saving, or maintaining their own student
6 data or documents.

7 (9) Supersede the federal Family Educational Rights
8 and Privacy Act of 1974, the Illinois School Student
9 Records Act, or any rules adopted pursuant to those Acts.

10 (10) Prohibit an operator or school from producing and
11 distributing, free or for consideration, student class
12 photos and yearbooks to the school, libraries, students,
13 parents, or individuals authorized by parents ~~and to no~~
14 ~~others~~, in accordance with the terms of a written
15 agreement between the operator and the school.

16 (Source: P.A. 100-315, eff. 8-24-17; 101-516, eff. 7-1-21.)