

September 20, 2016

The Honorable Richard Blumenthal
Ranking Member
Senate Commerce Committee
Subcommittee on Consumer Protection, Product
Safety, Insurance, and Data Security

The Honorable Steve Daines
Member
Senate Commerce Committee
Subcommittee on Consumer Protection, Product
Safety, Insurance, and Data Security

RE: SAFE KIDS Act must harmonize with state and federal legislation

Dear Senators Blumenthal and Daines:

The undersigned organizations – representing education software developers, innovators, and providers of digital instructional materials and services – thank you for your leadership on student privacy and security, and your demonstrated commitment to work with all stakeholders to ensure strong, balanced legislation. However, we remain concerned about the impacts of the SAFE KIDS Act (S. 1788) and its relationship to existing state and federal laws.

Our member companies work with schools, state agencies and universities nationwide to develop and deliver software applications, digital content, data systems, web services and related technologies. Our organizations completely agree with the need to safeguard student information, and our member companies are actively engaged in a continuous process to enhance student privacy and data security. The industry led Student Privacy Pledge – now signed by over 300 school service providers – is a testament to our commitment to the appropriate use of student data to meet legal responsibilities and community expectations. Moreover, today the FTC enjoys the ability to take enforcement actions for violations for this pledge.

We appreciate your commitment to keeping student information secure and believe S.1788 and its substitute makes an important contribution to that process. However, it must also be recognized that there now exists – in addition to federal law, enforceable privacy policies, and binding contracts – a strong protection framework of state laws. Since 2013, 38 states have enacted nearly 70 new student privacy laws, many of which are substantially similar to one another. As written, S. 1788 would not cut through this patchwork of laws, but instead add requirements and restrictions that create conflicting definitions and obligations on school service providers that create an overly-regulated environment nearly impossible to navigate.

State student privacy laws enacted over the past three years affecting vendors have been modeled off of one another, including in definitions, scope, prohibitions, and allowances. State policymakers have recognized the unintended consequences of enacting legislation which conflicts from one state to the next (or one level of government to the next) – such as providers meeting one state’s rules and not another’s or schools not knowing what they can or should expect from their providers. Federal legislation must make this same recognition and follow the states’ leadership by harmonizing any new federal authority with provisions enacted across states as well as with the multiple overlapping federal laws, including the Children’s Online Privacy Protection Act (COPPA) and the Family Educational Rights and Privacy Act (FERPA).

Technology and data are increasingly important to instruction, school operations and student success. From class scheduling to teacher electronic gradebooks to adaptive learning software, our schools have

a long history of effectively using student information, and of relying on technologies from school service providers.

Today, newer technologies like hosted (or 'cloud') computing and data analytics are enhancing school capacity, improving security, and improving functionality. The result of these tools is the ability for school systems to better identify students at risk of failure, to better identify the lessons that best meet each student's unique needs, and to more efficiently carry out core school administration. These tools and techniques allow educators to manage more data in more cost effective and sophisticated ways to inform instruction and enhance school productivity

As such, technology and data systems are increasingly mission critical to supporting students, families and educators – providing operational efficiencies, informing practice, and helping address the unique learning needs of each student. Modernizing our educational system through technology is critical to delivering a world-class education to our students, and ensuring the international competitiveness of the nation.

Our organizations recognize the importance of safeguarding student privacy, and we are committed to work with you on student privacy. Addressing student privacy issues as an individual state is not an easy task. Addressing student privacy in the context of nearly 70 existing state laws and additional federal laws is an immense undertaking for which we applaud your efforts. Our concerns with the legislation are not intended to diminish or weaken, but an attempt to avoid creating barriers to the appropriate use of technology and data by educators and students, institutions and families.

Again, we thank you for your dedication and work on these issues and look forward to continuing to work with you further. If you have questions regarding these positions, please do not hesitate to reach out to Brendan Desetti, SIIA's Director of Education Policy, at bdesetti@siaa.net.

Sincerely,

CompTIA
Computer & Communications Industry Association
Internet Association
NetChoice
The Software & Information Industry Association

CC: Senate Commerce Committee Chair and Ranking Member