



Dr. Virginia M. Barry, Commissioner
 New Hampshire Department of Education
 101 Pleasant Street
 Concord, NH 03301-3494

May 18, 2015

Concerns for the Department of Education from HB 520, Establishing privacy protections for student online personal information

Dear Commissioner Barry:

As you may be aware, HB 520, legislation designed to protect student privacy, has passed the House and the Senate. However, we are concerned that in its present form it could put New Hampshire students at a significant disadvantage to their out-of-state counterparts.

We ask that you help us in finding a way to address some important concerns which are outlined below, so that we can achieve the bills' goal of protecting student privacy without removing educational technology services used by granite state students and discouraging technology companies from working with New Hampshire schools.

HB 520 has the noble goal of codifying that students' educational information is not used for targeted advertising. The good news is that we not only support this goal but we have already incorporated it into our businesses.

Already federal and state laws already prevent interest-based advertising in various educational contexts. And just three months ago 125 education technology companies signed a Student Privacy Pledge¹ that stops them from using information they collect as part of school services for delivery of interest-based advertisements to students.

Unfortunately HB 520 goes well beyond this one goal and results in laws and restrictions that could actually inhibit educational technology innovation and discourage businesses from making these services available to New Hampshire students.

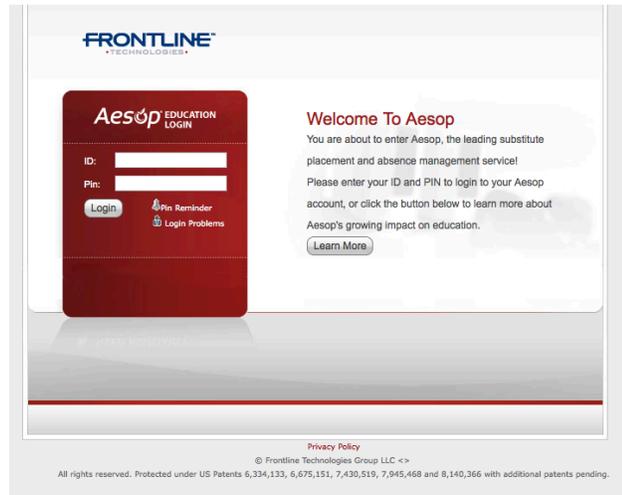


¹ <http://studentprivacypledge.org>

Without corrections, HB 520 would remove technology systems from the classroom. Consider the Salem School district whose teachers use MyLearningPlan.org. Under HB 520, MyLearningPlan couldn't disclose stored student information to the student's own teacher.

Likewise, Aesop, a resource for substitute teachers, couldn't tell the substitute the names of the students in the classroom to which they are going to teach.

HB 520 could also remove adaptive learning tools from New Hampshire classrooms. Adaptive learning technologies allow for a customized learning experience – adjusting to help students in areas in which they struggle. We've already seen New York and Maryland students improve when provided adaptive learning tools. We worry that if HB 520 takes effect without necessary amendments, New Hampshire students would be denied these tools.



In addition, HB 520 lacks proper data portability allowances. Data portability allows parents access to their child's student information. This enables parents to give this information to a tutor and take it with them when their child moves to a new school. Moreover, this mirrors parents' expectations that they can access information a school service has regarding their child.

We have attached amendment language designed to protect student privacy without limiting education. We offered some of these changes during the Senate process, but were unable to find the right approach, or find enough time to correct the bill. These amendments:

- Allow school service providers to sharing student information with the student's teacher.
- Amend the term "Operator" so it covers only educational services when actively engaged in providing these services to K-12 schools.
- Limit the scope of HB 520 to when these educational services are engaged in collecting "covered information" for "educational purposes" without which large companies might not risk providing educational services to New Hampshire schools if it subjects the entire company to the legal limitations in HB 520.
- Clarify the definition of "targeted advertising."

We all want to protect privacy students the overly broad nature of HB 520 would create serious limitations on the educational opportunities of New Hampshire students. Fortunately with these amendments, adopted by state legislatures across the country, we can strike the right balance between protection and isolation.

It would be most helpful if your office could review HB 520 with our concerns in mind to determine if you agree with how challenging it will be to implement this bill and some of the consequences to the use of educational technology in New Hampshire under HB 520.

Please let us know if we can provide further information.

Sincerely,

Carl Szabo
Policy Counsel, NetChoice

Shannon Abbott
Internet Coalition

Kevin Callahan
Director, TechAmerica

HB 520 – AS INTRODUCED

15-0771
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT establishing privacy protections for student online personal information.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Student Online Personal Information. Amend RSA 189 by inserting after section
2 68 the following new section:

3 189:68-a Student Online Personal Information.

4 I. For the purposes of this section:

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

9 (b) "Covered information" means personally identifiable information or materials regarding
10 a K-12 student who is a resident of this State, in any media or format that meets any of the
11 following:

12 (1) Is created or provided by a student, or the student's parent or legal guardian, to
13 an operator in the course of the student's, parent's, or legal guardian's use of the operator's site,
14 service, or application for K-12 school purposes.

15 (2) Is created or provided by an employee or agent of the K-12 school, school district,
16 local education agency, or county office of education, to an operator for K-12 purposes.

17 (3) Is gathered by an operator ~~through the operation of a site, service, or application~~
18 ~~described in subparagraph (a)~~ and is descriptive of personally identifies a student or otherwise is
19 linked to information that personally identifies a student, including, but not limited to, information
20 in the student's educational record or email, first and last name, home address, date of birth,
21 telephone number, unique pupil identifier, social security number, financial or insurance account
22 numbers, e-mail address, other information that allows physical or online contact, discipline records,
23 test results, special education data, juvenile dependency records, grades, evaluations, criminal
24 records, medical records, health records, biometric information, disabilities, socioeconomic
25 information, food purchases, political affiliations, religious information, text messages, documents,
26 other student identifiers, search activity, photos, voice recordings, or geo-location information.

27 (c) "K-12 school purposes" means purposes that customarily take place at the direction of
28 the K-12 school, teacher, or school district or aid in the administration of school activities, including,
29 but not limited to, instruction in the classroom or at home, administrative activities, and
30 collaboration between students, school personnel, or parents, or are for the use and benefit of the
31 school.

1 ~~(d) "Online service" includes cloud computing services, which shall comply with this~~
2 ~~section if they otherwise meet the definition of an operator.~~

3 (d) "Targeted advertising" means presenting advertisements to a student where the
4 advertisement is selected based on information obtained or inferred from that student's online
5 behavior, usage of applications, or covered information. "Targeted advertising" does not include
6 advertising to a student at an online location based upon that student's current visit to that location
7 or single search query without collection and retention of a student's online activities over time.

8 II. (a) No operator shall knowingly engage in any of the following activities with respect to
9 their site, service, or application:

10 (1) Targeted advertising on the operator's site, service, or application, or target
11 advertising on any other site, service, or application when the targeting of the advertising is based
12 upon any information, including covered information and persistent unique identifiers, that the
13 operator has acquired because of the use of that operator's site, service, or application.

14 (2) Use of information, including persistent unique identifiers, created or gathered
15 by the operator's site, service, or application, to amass a profile about a K-12 student except in
16 furtherance of K-12 school purposes. "Amass a profile" does not include collection and retention of
17 account registration records or information that remains under the control of the student, parent,
18 school or district.

19 (3) Sale, lease, rent, or trade, or otherwise make available¹ a student's information,
20 including covered information. This prohibition does not apply to the purchase, merger, or other type
21 of acquisition of an operator by another entity, provided that the operator or successor entity
22 continues to be subject to the provisions of this section with respect to previously acquired student
23 information.

24 (4) Disclosing ~~protected~~ covered information unless the disclosure is made: (i) to
25 respond to or participate in judicial process; (ii) to ensure legal or regulatory compliance or protect
26 against liability; (iii) to protect the security or integrity of its site, service, or application; (iv) to
27 protect the safety of users or others or security of the operator's site, service, or application; or (v) for
28 a school, educational, or employment purposes requested by the student or the student's parent or
29 guardian, provided that the information is not used or further disclosed for any other purpose.

30 (5) Disclosing covered information unless the disclosure is made to a service provider
31 provided the operator contractually: (i) prohibits the service provider from using any covered
32 information for any purpose other than providing the contracted service to, or on behalf of, the
33 operator; (ii) prohibits the service provider from disclosing any covered information provided by the
34 operator with subsequent third parties, unless the disclosure is expressly permitted by this Act; and
35 (iii) requires the service provider to implement and maintain reasonable security procedures and
36 practices as provided in subdivision (b).

¹ This would prevent any communication of student information to anyone, including teachers.
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(b) An operator shall:

(1) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information, and to protect that information from unauthorized access, destruction, use, modification, or disclosure.

(2) Delete a student's covered information within a reasonable time frame if the school or district requests deletion of data under the control of the school or district.

(c) Nothing in Subsections (II)(a)(1), (2), (4), or (5) shall be construed to prohibit the use or disclosure of covered information with the affirmative consent of the school, student or their parent or guardian given in response to clear and conspicuous notice of the use or disclosure.

~~(e)~~(d) Nothing in this section shall prohibit an operator from using de-identified student covered information as follows:

(1) Within the operator's site, service, or application or other sites, services, or applications owned by the operator to develop or improve educational products or services.

(2) To demonstrate the effectiveness of the operator's products or services, including in ~~their-its~~ marketing.

~~(d)~~(e) Nothing in this section shall prohibit an operator from sharing ~~aggregated~~ de-identified student covered information for the development ~~and-or~~ improvement of educational sites, services, or applications.

III. This section shall not apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.

IV. This section shall not be construed to limit Internet service providers from providing Internet connectivity to schools or students and their families.

V. This section shall not be construed to prohibit an operator ~~of an Internet website, online service, online application, or mobile application~~ from marketing educational products directly to parents so long as the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section.

VI. This section shall not be construed to impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance of this section on those applications or software.

VII. This section shall not be construed to impose a duty upon a provider of an interactive computer service, as defined in 47 U.S.C. section 230, to review or enforce compliance with this section by third-party content providers.

VIII. This section shall not be construed to impede the ability of a student's parent or guardian to download, export, transfer, or otherwise save or maintain their own student created

1 data or documents.

2 IX. This section shall not be construed to limit the ability of an operator to:

3 (a) Use student data, including covered information, for adaptive learning or customized
4 student learning purposes;

5 (b) Provide recommendation engines to recommend additional content or services to
6 students within an operator's site, service, or application without the response being determined in
7 whole or in part by payment or other consideration from a third party; or

8 (c) Respond to a student's request for information or for feedback without the information
9 or response being determined in whole or in part by payment or other consideration from a
10 third party.

11 ~~VIII.X~~ The provisions of this section are severable. If any provision of this section or its
12 application is held invalid, that invalidity shall not affect other provisions or applications that can be
13 given effect without the invalid provision or application.

14 2. Effective Date. This act shall take effect January 1, 2016.