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Bill Analysis

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Primary Sponsor: Sen. S. Huffman

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SUMMARY

Use of education records by technology providers

- Specifies that education records created, received, maintained, or disseminated by a technology provider are solely the property of the school district with which the provider has contracted.
- Generally prohibits a technology provider from selling, sharing, or disseminating education records or using those records for a commercial purpose.
- Requires each contract between a technology provider and a school district to ensure appropriate security safeguards for educational data.
- Requires each school district to provide parents and students with notice of any curriculum, testing, or assessment technology provider contract affecting a student's education records.
- Permits a school district or a technology provider to electronically access or monitor a student's activity on a school-issued device only in specific limited circumstances and requires notification of any permitted access.

Educational support services data

- Prohibits any person from releasing or permitting access to educational support services data concerning any student attending a public school for any reason.
- Exempts educational support services data from Ohio's Public Records laws.

DETAILED ANALYSIS

Use of education records by technology providers

The bill governs the collection, use, and protection of education records by technology providers.

For purposes of the bill, a “technology provider” is a person who contracts with a school district to provide a school-issued device for student use and creates, receives, or maintains education records pursuant to or incidental to its contract with the district.¹ Further, “education records” include records, files, documents, and other materials that contain information directly related to a student and are maintained by a school district board of education or by a person acting for the school district. Under continuing state and federal law, education records are confidential and cannot be released without parental permission.² The bill provides that the following types of documents are not subject to confidentiality:

1. Records of educational personnel that are in the sole possession of the maker and are not revealed to anyone but a substitute teacher;
2. Employee personnel records;
3. Records of an adult student, which are made or maintained by a recognized professional or paraprofessional acting in a professional capacity and that are used only in connection with treatment and not available to any other persons except by a physician or other appropriate professional of the student’s choice.³

These exceptions are in compliance with federal law.⁴

A “school-issued device” means hardware or software that a school district, acting independently or with a technology provider, provides to an individual student for that student’s dedicated personal use.⁵

Maintenance of education records

The bill specifies that education records created, received, maintained, or disseminated by a technology provider are solely property of the school district. If records maintained by the technology provider are subject to a security breach, the provider must disclose to the school district all information necessary to comply with Ohio law on agency disclosures of security breaches.⁶ Relatedly, the bill subjects technology providers to the continuing law provisions regarding security breaches of computerized personal information data.⁷

¹ R.C. 3319.324(E).

² R.C. 3319.321, not in bill.

³ R.C. 3319.324(A).

⁴ 20 United States Code 1232g(A)(4)(B).

⁵ R.C. 3319.324(C).

⁶ R.C. 3319.325(A) and (B).

⁷ See R.C. 1347.12, not in the bill.

Within 90 days of the expiration of a contract, unless renewal is reasonably anticipated, the bill requires a technology provider to destroy or return to the appropriate school district all education records created, received, or maintained pursuant to or incidental to the contract.⁸

The bill prohibits a technology provider from selling, sharing, or disseminating education records except as permitted or as part of a valid delegation or assignment of the contract with a school district. It also prohibits a technology provider from using educational data for any commercial purpose, including marketing or advertising to a student or parent. However, the provider may use aggregate redacted information for improving, maintaining, developing, supporting, or diagnosing the provider's site, service, or operation.⁹

Security safeguards

The bill requires that each contract between a technology provider and a school district ensure appropriate security safeguards for educational data and include: (1) a restriction on unauthorized access by the technology provider's employees or contractors, and (2) a requirement that the technology provider's employees may access education records only as necessary to perform official duties.¹⁰

Parental notice and inspection

Not later than August 1 of each school year, the bill requires each school district to provide parents and students with direct and timely notice by mail, e-mail, or other direct communication, of any curriculum, testing, or assessment technology provider contract affecting a student's education records. The notice must:

1. Identify each technology provider with access to education records;
2. Identify the education records affected by the contract;
3. Include information about the contract inspection and provide contact information for a school department to which a parent or student may direct questions or concerns regarding any program or activity that allows a curriculum, testing, or assessment technology provider to access a student's education records.

Parents and students must be given an opportunity to inspect a complete copy of any contract with a technology provider.¹¹

Prohibitions related to school-issued devices

The bill prohibits a school district or a technology provider from electronically accessing or monitoring: (1) location-tracking features of a school-issued device, (2) audio or visual

⁸ R.C. 3319.325(C).

⁹ R.C. 3319.325(D) and (E).

¹⁰ R.C. 3319.325(F).

¹¹ R.C. 3319.325(G).

receiving, transmitting, or recording features of a school-issued device, or (3) student interactions with a school issued device, including keystrokes and web-browsing activity.¹²

The bill waives this prohibition when the access or monitoring is any of the following:

1. Limited to a noncommercial educational purpose for instruction, technical support, or exam-proctoring by school district employees, student teachers, or contractors, vendors, or the Department of Education, provided advance notice is given;
2. Permitted under a judicial warrant;
3. Based upon the device being missing or stolen;
4. Necessary to respond to an immediate threat to life or safety, and limited to that purpose;
5. Necessary to comply with federal or state law; or
6. Necessary to participate in federal or state funding programs.¹³

When a school district or technology provider accesses a school-issued device in compliance with one of the exceptions, it must give notice to the student to whom the device was issued or that student's parent within 72 hours. That notice must include a written description of the interaction, identifying which features of the device were accessed and a description of the threat, if any. If notice would pose an imminent threat to life or safety, it must instead be given within 72 hours after the threat has ceased.¹⁴

Educational support services data

The bill also prohibits any person from releasing or permitting access to educational support services data concerning any student attending a public school for any reason.¹⁵ It further provides that educational support services data are not subject to Ohio's Public Records laws.¹⁶

The bill defines "education support services data" as data on individuals collected, created, maintained, used, or disseminated relating to programs administered by a school district board of education or an entity under contract with a school district designed to eliminate disparities and advance equities in educational achievement for youth by coordinating services available to participants, regardless of the youth's involvement with other government services.¹⁷

¹² R.C. 3319.326(A).

¹³ R.C. 3319.326(B).

¹⁴ R.C. 3319.326(C).

¹⁵ R.C. 3319.326(C).

¹⁶ R.C. 149.43(A)(1)(qq).

¹⁷ R.C. 3319.324(B).

HISTORY

Action	Date
Introduced	01-23-23
