

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 1337 Session of  
2022

---

INTRODUCED BY CAPPELLETTI, KANE, HUGHES, FONTANA, KEARNEY,  
COSTA, COMITTA, STREET, DILLON AND MUTH, SEPTEMBER 19, 2022

---

REFERRED TO EDUCATION, SEPTEMBER 19, 2022

---

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An  
2 act relating to the public school system, including certain  
3 provisions applicable as well to private and parochial  
4 schools; amending, revising, consolidating and changing the  
5 laws relating thereto," providing for student online personal  
6 data; imposing penalties; and making editorial changes.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Article XIII-C of the act of March 10, 1949  
10 (P.L.30, No.14), known as the Public School Code of 1949, is  
11 amended by adding a subarticle heading to read:

12 SUBARTICLE A

13 GOOD ORDER

14 Section 2. Sections 1301-C introductory paragraph, 1310-C,  
15 1311-C(a), 1312-C and 1315-C introductory paragraph of the act  
16 are amended to read:

17 Section 1301-C. Definitions.

18 The following words and phrases when used in this [article]  
19 subarticle shall have the meanings given to them in this section  
20 unless the context clearly indicates otherwise:

1 \* \* \*

2 Section 1310-C. Employee status.

3 When acting within the scope of this [article] subarticle,  
4 school police officers shall, at all times, be employees of the  
5 school entity or nonpublic school and shall be entitled to all  
6 of the rights and benefits accruing from that employment.

7 Section 1311-C. Independent contractors and third-party  
8 vendors.

9 (a) General rule.--Notwithstanding section 1310-C, a school  
10 entity or nonpublic school may contract with an independent  
11 contractor or third-party vendor to provide school police  
12 officer or school security guard services under this [article]  
13 subarticle.

14 \* \* \*

15 Section 1312-C. Construction.

16 Nothing in this [article] subarticle shall be construed to  
17 preclude a school entity or nonpublic school from employing  
18 other security personnel as the school entity or nonpublic  
19 school deems necessary.

20 Section 1315-C. Duties of commission.

21 The commission shall have the following duties under this  
22 [article] subarticle:

23 \* \* \*

24 Section 3. Article XIII-C of the act is amended by adding a  
25 subarticle to read:

26 SUBARTICLE B

27 STUDENT ONLINE PERSONAL DATA

28 Section 1321-C. Purpose.

29 The purpose of this subarticle is to strengthen privacy  
30 protections for students using education services technology by

1 prohibiting educational technology providers operating in an  
2 educational entity from:

3 (1) Selling student data.

4 (2) Using information collected to advertise to students  
5 and families.

6 (3) Creating student profiles to be used for  
7 noneducation purposes.

8 Section 1322-C. Definitions.

9 The following words and phrases when used in this subarticle  
10 shall have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Access software provider." A provider of software,  
13 including client or server software, or enabling tools that do  
14 any of the following:

15 (1) Filter, screen, allow or disallow content.

16 (2) Pick, choose, analyze or digest content.

17 (3) Transmit, receive, display, forward, cache, search,  
18 subset, organize, reorganize or translate content.

19 "Attorney General." The Attorney General of the  
20 Commonwealth.

21 "Biometric identifier." A measurable biological or  
22 behavioral characteristic that can be used for automated  
23 recognition of an individual. The following apply:

24 (1) The term shall include any of the following:

25 (i) A retina or iris scan.

26 (ii) A fingerprint.

27 (iii) A human biological sample.

28 (iv) A scan of the hand.

29 (v) A voice print.

30 (vi) Facial geometry.

1           (2) The term shall not include any of the following:

2                   (i) A physical description, including height,  
3                   weight, hair color or eye color.

4                   (ii) A writing sample.

5                   (iii) A written signature.

6                   (iv) Demographic data.

7           "Breach of Personal Information Notification Act." The act  
8 of December 22, 2005 (P.L.474, No.94), known as the Breach of  
9 Personal Information Notification Act.

10          "Children's Online Privacy Protection Act." The Children's  
11 Online Privacy Protection Act (Public Law 105-277, Div. C, Title  
12 XIII).

13          "Department." The Department of Education of the  
14 Commonwealth.

15          "Educational entity." A school district, charter school,  
16 cyber charter school, private school, private residential  
17 rehabilitative institution, nonpublic school, intermediate unit  
18 or area career and technical school operating within this  
19 Commonwealth.

20          "Educational record." Student data or other student  
21 information created and maintained by an educational entity or a  
22 third party.

23          "Family Educational Rights and Privacy Act." The Family  
24 Educational Rights and Privacy Act of 1974 (Public Law 90-247,  
25 20 U.S.C. § 1232g).

26          "IEP." An Individualized Education Plan under the  
27 Individuals with Disabilities Education Act.

28          "Individuals with Disabilities Education Act." The  
29 Individuals with Disabilities Education Act (Public Law 91-230,  
30 20 U.S.C. § 1400 et seq.).

1 "Information service." The offering of a capability for  
2 generating, acquiring, storing, transforming, processing,  
3 retrieving, utilizing or making available information via  
4 telecommunications. The term includes electronic publishing, but  
5 does not include any use of a capability for the management,  
6 control or operation of a telecommunications system or the  
7 management of a telecommunications service.

8 "Interactive computer service." An information service,  
9 system or access software that provides or enables computer  
10 access by multiple users to a computer server, including a  
11 service or system that provides access to the Internet and the  
12 systems operated or services offered by libraries or educational  
13 institutions.

14 "K-12 school purposes." A purpose that customarily takes  
15 place at the direction of the K-12 school, teacher or  
16 educational entity or aids in the administration of school  
17 activities, including instruction in the classroom or at home,  
18 administrative activities and collaboration between students,  
19 school personnel or parents or guardians or that is for the use  
20 and benefit of the school.

21 "Online service." Online service, including cloud computing  
22 services, provided by an entity subject to this subarticle.

23 "Privacy of Social Security Numbers Law." The act of June  
24 29, 2006 (P.L.281, No.60), referred to as the Privacy of Social  
25 Security Numbers Law.

26 "Protection of Pupil Rights Amendment." 20 U.S.C. § 1232h  
27 (relating to protection of pupil rights).

28 "Provider." Any of the following:

29 (1) A third-party vendor, contractor, subcontractor,  
30 corporation, partnership, business trust, foundation, limited

1 liability company, corporation or partnership, incorporated  
2 or unincorporated association, organization or any other  
3 legal entity.

4 (2) A government entity, other than the Commonwealth.

5 (3) A natural person.

6 "Section 504 plan." A plan prescribed by the Rehabilitation  
7 Act of 1973 (Public Law 93-112, 29 U.S.C. § 701 et seq.).

8 "Student data." Personally identifiable information or  
9 material regarding a student that is descriptive of the student  
10 and collected and maintained at the individual student level,  
11 notwithstanding the physical, electronic or other media format,  
12 including any of the following:

13 (1) The following information regarding the student:

14 (i) Name.

15 (ii) Date and location of birth.

16 (iii) Social Security number.

17 (iv) Gender.

18 (v) Race.

19 (vi) Ethnicity.

20 (vii) Tribal affiliation.

21 (viii) Sexual identity or orientation.

22 (ix) Migrant status.

23 (x) English language learner status.

24 (xi) Disability status.

25 (xii) Mother's maiden name.

26 (xiii) Contact information, including telephone  
27 numbers, email addresses, physical addresses, home  
28 address, geolocation information and other distinct  
29 contact identifiers.

30 (xiv) Text messages, photos, voice recordings or

- 1 documents.
- 2 (xv) Search identifiers or search activities.
- 3 (xvi) Disabilities.
- 4 (xvii) Special education records or an applicable  
5 mandate under the Individuals with Disabilities Education  
6 Act.
- 7 (xviii) An IEP, Section 504 plan or other written  
8 education plan, including special education evaluation  
9 data for the program or plan.
- 10 (xix) A student's identification number.
- 11 (xx) State or Local assessment results or the reason  
12 for an exception from taking a State or local assessment.
- 13 (xxi) Courses taken and completed, credits earned or  
14 other transcript information.
- 15 (xxii) Course grades, grade point average,  
16 evaluations or another indicator of academic achievement.
- 17 (xxiii) Cohort graduation rate or related  
18 information.
- 19 (xxiv) Degree, diploma, credential attainment or  
20 other school exit information.
- 21 (xxv) Attendance and mobility.
- 22 (xxvi) Dropout data.
- 23 (xxvii) An immunization record or the reason for an  
24 exception from receiving an immunization.
- 25 (xxviii) Remediation efforts.
- 26 (xxix) Cumulative disciplinary records.
- 27 (xxx) Juvenile delinquency records.
- 28 (xxxii) Criminal records.
- 29 (xxxii) Medical or health records created or  
30 maintained by an educational entity, including test

1 results.

2 (xxxiii) Political affiliation, voter registration  
3 information or voting history.

4 (xxxiv) Income or other socioeconomic information,  
5 except as required by law or if an educational entity  
6 determines income information is required to apply for,  
7 administer, research or evaluate programs to assist  
8 students from low-income families.

9 (xxxv) Religious information or beliefs.

10 (xxxvi) A biometric identifier or other biometric  
11 information.

12 (xxxvii) Food purchases.

13 (xxxviii) Geolocation data.

14 (xxxix) Any other information that either on its own  
15 or collectively could reasonably be used to identify a  
16 specific student.

17 (2) The following information regarding family members,  
18 including parents and legal guardians, of the student:

19 (i) Name of family members.

20 (ii) Contact information for family members,  
21 including telephone numbers, email addresses, physical  
22 addresses and other distinct contact identifiers.

23 (iii) Education status, an educational record or  
24 student data of a family member who is a student.

25 (3) Data, information or material that is created or  
26 provided by a student or the student's parent or legal  
27 guardian to a provider in the course of the student's,  
28 parent's or legal guardian's use of the provider's site,  
29 service or application for K-12 purposes.

30 (4) Data, information or material that is created or



1 provided by an employee or agent of the K-12 educational  
2 entity, the department or a county department of education to  
3 a provider.

4 (5) Data, information or material that is gathered by a  
5 provider through the operation of a site, service or  
6 application used primarily for K-12 school purposes and that  
7 is descriptive of a student or otherwise identifies a  
8 student, including student data under paragraphs (1) and (2).

9 "Targeted marketing." Advertising to a student or a  
10 student's parent or legal guardian that is selected based on  
11 information obtained or inferred from the student's online or  
12 offline behavior, usage of applications or student data. The  
13 term does not include:

14 (1) Advertising to a student at an online location based  
15 on the student's current visit to the location or single  
16 search query without collection and retention of the  
17 student's online activities over time.

18 (2) Use of the student's personally identifiable student  
19 data to identify for the student institutions of higher  
20 education or scholarship providers that are seeking students  
21 who meet specific criteria, if a written data authorization  
22 by the student or the student's parent or legal guardian, if  
23 the student is under 18 years of age, permits the disclosure  
24 of use.

25 "Third-party vendor." The provider of a publicly accessible  
26 Internet website, online service, online application or mobile  
27 application with actual knowledge that the site, service or  
28 application is used primarily for K-12 school purposes, was  
29 designed and marketed for K-12 school purposes and has entered  
30 into a contract with an educational entity to provide a related

1 good or service. The term includes a subcontractor.

2 Section 1323-C. Department duties and responsibilities.

3 (a) State data system and secure transmittal.--Within six  
4 months of the effective date of this subsection, the department  
5 shall establish in the department a State data system on a  
6 technology platform that maintains student data in a safe  
7 educational electronic document delivery and storage system. The  
8 system design shall include an integrated educational entity  
9 interdepartmental communication tool for exchange of student  
10 data. The data contained in the State data system shall be  
11 transmitted, stored, delivered or integrated in a manner that  
12 meets the requirements of:

13 (1) This subarticle.

14 (2) The Family Educational Rights and Privacy Act,  
15 Protection of Pupil Rights Amendment, Children's Online  
16 Privacy Protection Act and any regulations promulgated under  
17 the acts.

18 (3) The Breach of Personal Information Notification Act,  
19 Privacy of Social Security Numbers Law and any regulations  
20 promulgated under the acts.

21 (4) Other Federal and State data privacy and security  
22 laws applicable to educational entities.

23 (b) State data system guidelines.--Within six months of the  
24 effective date of this subsection, the department, in  
25 consultation with a third-party cloud-based solution leader in  
26 the industry, shall develop guidelines for the educational  
27 entities' use of a State data system third-party platform to  
28 assist educational entities in protecting student data.

29 (c) Model policies and procedures.--Within six months of the  
30 effective date of this subsection, the department shall develop

1 and post on its publicly accessible Internet website a model:

2 (1) Student data privacy and security plan.

3 (2) Training program that provides best practices on  
4 protecting student data and use of third-party vendor  
5 platforms that an educational entity may use and adopt.

6 (3) Third-party vendor protection of student data  
7 policy. The policy shall include best practices strategies  
8 for student data security.

9 (4) Security policies and procedures to protect student  
10 records and student data in accordance with this subarticle  
11 to protect information from unauthorized access, destruction,  
12 use, modification or disclosure.

13 (5) Review process for each request for data for the  
14 purpose of external research or evaluation.

15 (d) Model contract.--

16 (1) Within six months of the effective date of this  
17 subsection, the department, in consultation with a third-  
18 party vendor and the Attorney General, shall provide guidance  
19 and develop a model contract for use between educational  
20 entities and third-party vendors to ensure that the  
21 requirements of this subarticle are incorporated with the  
22 educational entities' use of technologies and that third-  
23 party vendors are contractually bound to sustain, enhance and  
24 not erode privacy protections relating to the use, collection  
25 and disclosure of student data. The model contract shall be  
26 reviewed on a biennial basis and revised if necessary.

27 (2) The State Board of Education shall promulgate final-  
28 omitted regulations under the act of June 25, 1982 (P.L.633,  
29 No.181), known as the Regulatory Review Act, as necessary to  
30 implement the model contract and may revise the model

1 contract by transmitting a notice to the Legislative  
2 Reference Bureau for publication in the Pennsylvania Bulletin  
3 that contains a summary of the revised model contract. The  
4 revised model contract shall be placed on the department's  
5 publicly accessible Internet website.

6 Section 1324-C. Educational entity duties and responsibilities.

7 (a) Policy.--Within one year of the effective date of this  
8 subsection, each educational entity shall adopt a written policy  
9 regarding:

10 (1) Third-party vendor protection of student data  
11 policy.

12 (2) Reasonable security policies and procedures to  
13 protect student records and student data, in accordance with  
14 this subarticle to protect information from unauthorized  
15 access, destruction, use, modification or disclosure.

16 (3) A review process for each request for data for the  
17 purpose of external research or evaluation.

18 (4) The policies adopted by the educational entity under  
19 this subsection may be based on the model policies developed  
20 by the department under section 1323-C(c).

21 (5) The policies adopted under this subsection shall be  
22 posted on the educational entity's publicly accessible  
23 Internet website.

24 (6) The policies under this subsection shall be  
25 submitted to the department upon adoption.

26 (b) Report.--Each educational entity shall report annually  
27 to the department any proposed changes to the educational  
28 entity's third-party vendor protection policies and the  
29 educational entity's data security policies and procedures and  
30 the number of occurrences of data security breaches. The annual

1 report shall be submitted to the department no later than July 1  
2 of each year.

3 Section 1325-C. Educational entity and third-party vendor  
4 contract requirements.

5 (a) General rule.--Each educational entity shall develop a  
6 secure platform to protect student records and student data in  
7 accordance with this subarticle to protect student data from  
8 unauthorized access, destruction, use, modification or  
9 disclosure.

10 (b) Authority.--An educational entity may enter into a  
11 contract with a third-party vendor for goods and services to be  
12 used primarily for K-12 school purposes to meet the requirements  
13 of subsection (a). The contract must be in writing and signed by  
14 each party and may be based on the model contract developed by  
15 the department under section 1323-C(d).

16 (c) Contract terms.--The service or goods under the contract  
17 may include educational learning tools requiring the use of  
18 student data only if the third-party vendor contract contains  
19 contractually binding terms for:

20 (1) Implementation and maintenance of reasonable  
21 security procedures and practices appropriate to the nature  
22 of the student data.

23 (2) Protection of student data from unauthorized access,  
24 destruction, use, modification or disclosure.

25 (3) Deletion of student data if the educational entity  
26 requests deletion of student data that is under the control  
27 of the educational entity.

28 (4) Assurance that a contract made by the third-party  
29 vendor with a subcontractor has the same binding contract  
30 provisions and same prohibited acts for use of student data.

1           (5) Breach of contract clause for a violation of  
2           prohibited use of student data under this subarticle.

3           (d) Contract terms and prohibited use of student data.--A  
4           contract for goods or services with a third-party vendor shall  
5           include the acts that are prohibited by the third-party vendor,  
6           including:

7           (1) Using student data for a purpose other than  
8           providing the contracted goods and services.

9           (2) Knowingly engaging in targeted marketing on the  
10           third-party vendor's publicly accessible Internet website,  
11           online service or application.

12           (3) Knowingly engaging in targeted marketing on any  
13           other publicly accessible Internet website, service or  
14           publication when the targeted marketing is based upon any  
15           information, including the student data and the persistent  
16           unique identifiers, that the third-party vendor has acquired  
17           because of the use of the publicly accessible Internet  
18           website, service or application under paragraph (1).

19           (4) Knowingly engaging in amassing a profile about a K-  
20           12 student, including the third-party vendor's persistent use  
21           of unique identifiers, created or gathered by the publicly  
22           accessible Internet website, service or application, except  
23           in furtherance of K-12 purposes.

24           (5) Selling student data, excluding activities involving  
25           a merger or other type of acquisition of a third-party vendor  
26           by another third-party vendor, if the acquiring third-party  
27           vendor or successor entity continues to be subject to the  
28           provision of this subarticle with respect to previously  
29           acquired student data.

30           (6) Disclosing student data unless the disclosure is

1 permissible under this subarticle or Federal or State law.  
2 Section 1326-C. Third-party vendor duties and responsibilities.

3 (a) Student data use and disclosure.--A third-party vendor  
4 may:

5 (1) Use or disclose student data to allow or improve  
6 operability and functionality within the student's classroom,  
7 virtual instruction or within the educational entity in the  
8 furtherance of the K-12 school purpose or is legally required  
9 to comply with this subarticle.

10 (2) Use or disclose student data to ensure legal and  
11 regulatory compliance, including complying with requirements  
12 of Federal and State law in protecting and disclosing the  
13 data.

14 (3) Use or disclose student data for research purposes  
15 as required by Federal or State law under applicable  
16 restrictions or if allowed under Federal or State law so long  
17 as no student data is used for a purpose in the furtherance  
18 of targeted marketing or to amass a profile on the student  
19 for purposes other than K-12 school purposes.

20 (4) Disclose student data to respond to or participate  
21 in the judicial process.

22 (5) Protect the safety of users or others or security of  
23 the publicly accessible Internet website.

24 (6) Comply with the requirements and prohibitions  
25 included in the contract with the educational entity for  
26 goods and services to be used primarily for K-12 school  
27 purposes under section 1325-C, as well as any additional  
28 agreed-to requirements an prohibitions included in the  
29 contract.

30 (7) Disclose student data to a service provider or a

1 subsequent subcontractor that may accompany the third-party  
2 vendor in the provision of the good or service, if the third-  
3 party vendor contractually prohibits the use of the student  
4 data for any purpose other than providing the contracted  
5 service to, or on behalf of, the third-party vendor,  
6 prohibits the disclosure of student data provided by the  
7 third-party vendor with subsequent third parties and requires  
8 the implementation and maintenance of reasonable security  
9 procedures and practices required of the third-party vendor  
10 under section 1325-C(c).

11 (b) Deletion of student data.--A third-party vendor shall  
12 delete student data if the educational entity requests deletion  
13 of student data under the control of the educational entity.

14 (c) Disclosure or selling of information.--A third-party  
15 vendor may disclose or sell student data to a service provider  
16 or a subsequent subcontractor if the acquiring service provider,  
17 third-party vendor or subsequent subcontractor agrees to be  
18 subject to this subarticle with respect to previously acquired  
19 student data and subsequently acquired student data.

20 Section 1327-C. Construction.

21 (a) Duty not imposed.--Notwithstanding any other provision  
22 under this subarticle, this subarticle shall not impose a duty  
23 upon:

24 (1) An electronic store, gateway, marketplace or other  
25 means of purchasing or downloading software or applications  
26 to review or enforce compliance of this section on the  
27 applications or software.

28 (2) An interactive computer service to review or enforce  
29 compliance with this section by third-party content  
30 providers.



1 (b) Ability not limited.--Nothing under this subarticle  
2 shall be construed to prohibit or otherwise limit the ability  
3 of:

4 (1) An educational entity from reporting or making  
5 available aggregate student data or other collective data for  
6 reasonable usage.

7 (2) A third-party vendor from using student data,  
8 including information protected in this subarticle, for the  
9 purposes of adaptive learning or customized student learning  
10 purposes or for maintaining, developing, supporting,  
11 improving or diagnosing the third-party vendor's publicly  
12 accessible Internet website, service or application.

13 (3) A third-party vendor from marketing educational  
14 products directly to parents or students if the marketing did  
15 not result from the use of student data obtained by the  
16 third-party vendor through the provisions of goods or  
17 services covered under this subarticle.

18 (4) An Internet service provider from providing Internet  
19 connectivity to schools or students and their families.

20 (5) A student to download, export or save or maintain  
21 the student's own student-created data or documents.

22 Section 1328-C. Enforcement.

23 An educational entity or third-party vendor that fails to  
24 comply with a duty or other provision under this chapter  
25 resulting in the intentional, knowing, reckless or negligent  
26 data breach or security compromise shall be subject to the  
27 following penalties and process:

28 (1) The Bureau of Consumer Protection in the Office of  
29 Attorney General shall investigate any complaints received  
30 concerning violations of this subarticle. If, after

1 investigating a complaint, the Attorney General finds that  
2 there has been a violation of this subarticle, the Attorney  
3 General may bring an action to impose a civil penalty up to  
4 \$10,000 for each violation and to seek other relief,  
5 including injunctive relief, restitution and costs under the  
6 act of December 17, 1968 (P.L.1224, No.387), known as the  
7 Unfair Trade Practices and Consumer Protection Law.

8 (2) Prior to the initiation of a civil action, the  
9 Attorney General may require the attendance and testimony of  
10 witnesses and the production of documents. For this purpose,  
11 the Attorney General may issue subpoenas, examine witnesses  
12 and receive evidence. If a person objects to or otherwise  
13 fails to comply with a subpoena or request for testimony, the  
14 Attorney General may file in Commonwealth Court or any court  
15 of record of the Commonwealth an action to enforce the  
16 subpoenas or request. Notice of hearing of the action and a  
17 copy of each pleading shall be served upon the person who may  
18 appear in opposition.

19 (3) Testimony taken or material produced shall be kept  
20 confidential by the Attorney General except to the extent  
21 that the information may be used in a judicial proceeding, if  
22 the disclosure is authorized by the court for good cause  
23 shown or confidentiality is waived by the person being  
24 investigated and by the person who has testified, answered  
25 interrogatories or produced materials.

26 Section 1329-C. Criminal and civil liability.

27 Nothing under this subarticle shall limit, preclude or  
28 supersede an action for criminal or civil liabilities applicable  
29 or enforceable under a Federal or State law.

30 Section 1330-C. Regulations.

1     (a) General rule.--The State Board of Education, in  
2     consultation with the Office of Attorney General, shall develop  
3     regulations necessary to implement this subarticle.

4     (b) Final-omitted regulations.--Within one year of the  
5     effective date of this subsection, the State Board of Education  
6     shall promulgate final-omitted regulations under the act of June  
7     25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

8     Section 4. This act shall take effect in 60 days.