

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1062
 Ways and Means

(Delegate D. Jones)

Education, Health, and Environmental Affairs

Education - Student Data Privacy - Reports and Student Data Privacy Council
 Sunset Extension

This bill requires each local board of education, by July 1, 2021, and annually thereafter, to submit a list that contains (1) approved digital tools; (2) digital tools known to be used by educators; and (3) digital tools not authorized by the local board of education, to the Maryland State Department of Education (MSDE). MSDE must publish an online database of the digital tools by September 1, 2021, and annually thereafter. By July 1, 2022, MSDE must submit an additional report on the development and implementation of best practices in the area of data governance as specified by Chapter 381 of 2018. By December 1, 2024, the Student Data Privacy Council must report on (1) the implementation of the digital tools list report and (2) best practices for student data privacy protection for parents and guardians, including those specified. The termination date of the council is extended from May 31, 2021, to September 30, 2025. Further, the bill changes the definitions of “covered information,” “operator,” and “persistent unique identifier” with regards to the Student Data Privacy Act of 2015. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$25,000 in FY 2022 to hire a contractor to build an online database. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	25,000	0	0	0	0
Net Effect	(\$25,000)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local school systems can gather and send the required information about digital tools using existing resources; however, resources may be temporarily diverted from existing tasks and priorities.

Small Business Effect: None.

Analysis

Bill Summary: “Covered information” is defined as information or material that, alone or in combination with other information or material, is linked or could be linked to a student in a manner that would allow an employee or student of the student’s school to identify the student with reasonable certainty. It is expanded to include, online behavior or usage or applications when linked or linkable to a specific student, persistent unique identifiers, and confidential information as defined by the Department of Information Technology. Further, the bill specifies “educational records” that are “covered information.”

“Operator” means an individual or entity that engages with institutions under the school official exception of the federal Family Educational Rights and Privacy Act and processes covered information as specified via a platform that is used for a preK-12 school purpose or is issued at the direction of a public school, a teacher, or any other employee of a public school, local school system, or MSDE. Further, operator includes a division of a parent entity if the division services education clients and does not share covered information with the parent entity.

“Persistent unique identifier” is defined as an identifier that can be used to identify, recognize, track, single out, or make references about a student enrolled in prekindergarten through grade 12, the parent or guardian of the student, and any other student of whom the parent or guardian has custody, including those specified.

Current Law:

Student Data Privacy Act of 2015

The Student Data Privacy Act of 2015 (Chapter 413) requires an operator of specified websites, online services, online applications, and mobile applications designed primarily for a preK-12 public school purpose operating in accordance with a contract to (1) protect covered information from unauthorized access, destruction, use, modification, or disclosure; (2) implement and maintain reasonable security procedures and practices to protect covered information; and (3) delete covered information upon request of the public school or local school system. In addition, an operator may not knowingly (1) engage in targeted advertising based on the data collected through the website, online service, or application; (2) except in furtherance of a preK-12 school purpose, use information to make a profile about a student; (3) sell a student’s information, except as provided; or (4) disclose covered information, except as detailed in the bill. Operators may use aggregated or de-identified information under certain circumstances. The bill does not apply to general

audience websites, online services, online applications, or mobile applications, even if a login is created.

Educational Records Defined

“Educational records” means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student’s cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

State Data Governance

Chapter 381 of 2018 required MSDE, in consultation with the Department of Information Technology (DoIT) and the local boards of education, to develop and update best practices for local boards of education on data governance and professional development on data governance policies and procedures. MSDE must also develop strategies to coordinate and assist local data governance staff in the counties to implement the requirements of Chapter 381.

Chapter 381 defines “personally identifiable information” (PII) as information that, alone or in combination, makes it possible to identify an individual student with reasonable certainty.

MSDE, in consultation with DoIT and the local boards of education, must develop and update best practices for local boards to:

- manage and maintain data privacy and security practices in the processing of student data and PII across the local boards’ information technology and records management systems;
- develop and implement (1) a data privacy and security incident response plan; (2) a breach notification plan; and (3) procedures and requirements for allowing access to student data and PII for a legitimate research purpose; and
- publish information annually on (1) types of student data and PII processed by the boards, protocols for processing student data, and rationales for selecting processing protocols; (2) contracted services that involve sharing student data between a board and a school service contract provider; and (3) procedures and rationales for vetting and selecting Internet sites, services, and applications.

MSDE was required to report twice, by July 1 of [2019](#) and [2020](#), on the status of (1) development and implementation of best practices in the areas of data governance, transparency, and professional development; (2) levels of engagement by local boards; (3) barriers to engagement, if any, including fiscal, statutory, or workplace obstacles; and (4) any recommended statutory changes.

Student Data Privacy Council

Chapter 398 of 2019 established the council, which is set to terminate on May 31, 2021.

The council must:

- study the development and implementation of the Student Data Privacy Act of 2015 to evaluate the impact of the Act on (1) the protection of covered information from unauthorized access, destruction, use, modification, or disclosure; (2) the implementation and maintenance of reasonable *security* procedures and practices to protect covered information under the Act; and (3) the implementation and maintenance of reasonable *privacy* controls to protect covered information under the Act;
- review and analyze similar laws and best practices in other states;
- review and analyze developments in technologies as they may relate to student data privacy; and
- make recommendations regarding statutory and regulatory changes to the Student Data Privacy Act based on the findings of the council and repealing the termination date of the Act that established the council to allow the council to continue its evaluation of student data privacy in the State on a permanent basis.

The State Superintendent of Schools or designee must chair the council and is responsible for the administration of the council. MSDE must staff the council.

Members of the council may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

The council was required to [report](#) its findings and recommendations by December 31, 2020.

State Expenditures: General fund expenditures increase by an estimated \$25,000 in fiscal 2022 for MSDE to hire a contractor to build an online database of digital tools to be populated by information provided by each local school system by September 1, 2021. This estimate assumes no ongoing contracting costs to maintain the database.

MSDE advises that in addition to hiring a contractor to build the database, it requires a half-time education program specialist to collect the information from local school systems, provide technical assistance to personnel in the local school systems for the collection and transmittal of the data, and generally manage the online database. The Department of Legislative Services advises that the database can be updated once a year using existing resources; however, resources may be temporarily diverted from existing tasks and priorities. Alternatively, MSDE could instruct the contractor to build a database in which local school systems directly uploaded their own data. This may increase fiscal 2022 contracting costs.

MSDE can continue to staff the council and submit the required reports using existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 733 (Senator Lee) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland State Department of Education; Baltimore City Public School System; Department of Legislative Services

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