

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 769
Ways and Means

(Delegates D. Jones and Kaiser)

Education, Health, and Environmental Affairs

Student Data Privacy - Protections, Digital Tools, and Student Data Privacy
Council

This bill requires the Student Data Privacy Council, which is reestablished by the bill, to report, by December 1, 2025, on best practices for student data privacy protection for parents and guardians. Further, the bill changes the definitions of “covered information,” “operator,” and “persistent unique identifier” with regard to the Student Data Privacy Act of 2015. **The bill takes effect June 1, 2022; the council terminates September 30, 2028.**

Fiscal Summary

State Effect: The Maryland State Department of Education (MSDE) can staff the reestablished council and produce the required report using existing resources. Revenues are not affected.

Local Effect: None.

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” includes an entity who engages with institutions under the school official exception of the federal Family Educational Rights and Privacy Act and processes covered information that is used for a prekindergarten through grade 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. It includes a division of a parent entity if the division serves 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.

Student Data Privacy Council

Chapter 398 of 2019 first established the council, which terminated May 31, 2021. The bill reestablishes the council and specifies its membership.

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 (1) statutory and regulatory changes to the Student Data Privacy Act based on the findings of the council and (2) repealing the termination date of the council in the bill 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.

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 Act. Operators may use aggregated or de-identified information under certain circumstances. The Act 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.

Student Data Privacy Council

Chapter 398 of 2019 first established the council, which terminated May 31, 2021. The council was required to [report](#) its findings and recommendations by December 31, 2020.

Additional Information

Prior Introductions: SB 733 of 2021, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1062, passed the House and was referred to the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Designated Cross File: SB 325 (Senators Lee and Hester) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Information Technology; Maryland Longitudinal Data System Center; Maryland State Department of Education; Prince George's County Public Schools; Department of Legislative Services

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