



**Legislative Council Staff**  
*Research Note*

Version: Final

Date: 9/14/2016

**Bill Number**

**House Bill 16-1423**

**Sponsors**

***Representatives Lundeen and  
Garnett  
Senator Hill***

**Short Title**

***Student Data Collection Use  
Security***

**Research Analyst**

**Lisa Gezelter (x3264)**

**Status**

This research note reflects the final version of the bill, which became effective August 10, 2016.

**Summary**

This bill places new restrictions on the collection, use, and disposition of students' personally identifiable information (PII). It imposes requirements on the State Board of Education, the Colorado Department of Education, local education providers, and contract providers to protect students' PII and spells out parents' rights over their children's PII.

***State Board of Education (SBE).*** The bill makes technical changes to requirements for the SBE relating to setting policy and adds a provision that any entity, subcontractors, or employees of organizations that are parties to agreements to use students' PII for research purposes comply with the same requirements the bill places on all contract providers.

***Colorado Department of Education (CDE).*** CDE is required to ensure that contracts involving the sharing of PII include certain restrictions and requirements. CDE must terminate a contract if a researcher breaches the contract through the misuse or unauthorized release of student PII. The department must also maintain on its website a detailed list of vendors, researchers, organizations, and government agencies with which it has data sharing agreements. CDE must also create a sample student PII privacy and protection policy, and sample school service provider contract language that local education providers (LEPs) may use. The department must also make training materials and training services available to LEPs that wish to train employees in student information security and privacy.

***Local education providers (LEPs).*** LEPs are required to adopt student information and

*This research note was prepared by Legislative Council Staff, the nonpartisan research staff for the Colorado General Assembly. The research note is provided for informational purposes only and should not be relied upon as an official record of action by the General Assembly. Legislative Council Staff are not attorneys, and the research note is not a legal opinion. If you have legal questions about the bill, including questions about the meaning of the bill language or amendments, please contact the drafter.*

privacy policies by December 31, 2017, or July 1, 2018, for small, rural school districts. Each LEP must make copies of the policy available to parents upon request and post the policy on its website. LEPs must ensure that data sharing agreements with contract providers include certain restrictions and requirements. If contract providers misuse data or make an unauthorized release of student PII, LEPs must terminate the agreement or hold a public meeting to discuss the nature of the breach and decide the future of the agreement. LEPs must post on their websites a list of the student PII collected and maintained by the LEP, in addition to the PII that is submitted to the state.

**Contract providers.** The bill defines contract providers as commercial entities that provide school services by formal contract with either CDE or an LEP. Contract providers are required to provide clear information regarding the collection, use, and sharing of student PII. Contract providers may only collect and use student PII for specified purposes authorized by the contract, and must obtain parental consent to use a student's data in any other way. Contract providers are prohibited from selling student PII, using student PII for targeted advertising, or using student PII to create a profile, except when authorized by contract or parental consent. Contract providers may share student PII with subcontractors who are subject to the same restrictions. Each contract provider must maintain a comprehensive information security program and must destroy student PII in accordance with the terms of the contract. The bill also creates certain exceptions. Any use of PII under these exceptions must be made known to the contracting entity. The bill also regulates the destruction of student PII collected under a contract.

**On-demand providers.** The bill defines on-demand providers as those commercial entities that an LEP or employees of an LEP choose to use without entering into a formal, negotiated contract. LEPs must post a list of the on-demand providers used by the LEP or its employees, and update the list twice each year. If an LEP has evidence that an on-demand provider does not comply with the LEP's privacy policy, or does not meet the restrictions and requirements imposed on contract providers, the LEP is strongly encouraged to stop using the on-demand provider. CDE must post on its website a list of on-demand providers that LEPs stop using as a result of data privacy issues, and any written statements from those on-demand providers.

**Parents' rights.** Under the bill, parents have the right to inspect and review their children's PII, request a paper or electronic copy of their children's PII, and request corrections to factually inaccurate PII that an LEP maintains. The governing board of each LEP must adopt a policy for hearing complaints from parents concerning data policies.

## Background

Current law requires the SBE to develop policies and procedures to comply with federal privacy regulations and to ensure that agreements with researchers involving the disclosure of student data require those researchers to specify the purpose of the study and the information to be disclosed, use student data exclusively to meet the requirements of the study, conduct the study in a manner that does not permit access to PII by persons or organizations not involved in the study, and destroy all PII when the data are no longer needed.

CDE must publish on its website a data dictionary listing all the data elements on students that are collected by the state, and must have a process to consider and review all outside requests for student data by individuals not employed by the state. Juvenile delinquency or criminal records, medical records, student social security numbers, student biometric information, or other student data requested by a federal, state, or local agency outside Colorado may only be shared under certain conditions.

## House Action

**House Education Committee (April 11, 2016).** At the hearing, representatives of the Colorado Association of School Boards (CASB), the American Civil Liberties Union (ACLU), the School Coalition for Excellence, Stand for Children Colorado, and several parents spoke in support of the bill. A representative of the Software and Information Industry Association spoke in support of amending the bill. The committee adopted amendment L.001, which allowed CDE to determine whether or not to terminate contracts based on policies set by the SBE and to hold a public hearing. The amendment created a similar provision for LEPs. The committee also adopted amendment L.002, which made certain technical changes and required contract providers or subcontractors to notify the contracting entity as soon as possible after an unauthorized release of PII. The committee referred the bill, as amended, to the House Committee of the Whole.

**House second reading (April 13, 2016).** The House Committee of the Whole adopted the Education Committee report and amendments no. 2 and 3 by Representative Garnett. Amendment no. 2 made a slight technical change, and amendment no. 3 made certain technical changes and added class photos and yearbooks to the items that are allowed under the bill. The House Committee of the Whole passed the bill, as amended.

**House third reading (April 14, 2016).** The House passed the bill with no amendments.

**House consideration of Senate amendments (May 5, 2016).** The House concurred with Senate amendments to the bill.

## Senate Action

**Senate Education Committee (April 27, 2016).** At the hearing, representatives of the SBE, CASB, the Colorado Association of School Executives, the ACLU, Freedom for Education, and several parents spoke in support of the bill. The committee adopted amendment L.009, which clarified the definition of data destruction; required CDE to publish copies of contracts and agreements; gave the department, LEPs, and contractors more latitude in determining whether or not to terminate contracts; allowed for contractors to respond to accusations of data breaches; required LEPs to post a list of contract providers and the associated contracts; and made certain technical changes. The committee also adopted amendment L.008, which made certain technical changes to the bill. The committee referred the bill, as amended, to the Senate Committee of the Whole.

**Senate second reading (April 29, 2016).** The Senate Committee of the Whole adopted the Education Committee report and passed the bill with no amendments.

**Senate third reading (May 3, 2016).** The Senate passed the bill with no amendments.