

\*Language is occasionally summarized or shortened for brevity/comparison. Confirm exact text with original bill language.

FPF/SIIA Pledge Language:	SOPIPA Senate 1177	Messer/Polis Mar 2015 Bill
Effective January 1, 2015	Effective January 1, 2016	Effective 18 months after the date of enactment.
<p>Signatories include:</p> <p>‘School service provider’ refers to any entity that: (1) is providing, and is operating in its capacity as a provider of, an online or mobile application, online service or website that is both designed and marketed for use in United States elementary and secondary educational institutions/ agencies and is used at the direction of their teachers or other employees; and (2) collects, maintains or uses student personal information in digital/electronic format. The term ‘school service provider’ does not include an entity that is providing, and that is operating in its capacity as a provider of, general audience software, applications, services or websites not designed and marketed for schools.</p>	<p>Affected parties include:</p> <p>1177 – “Operators” of web sites, online services, online applications, or mobile applications with actual knowledge of primary use by K-12 schools AND design and market for K-12 school purposes.</p> <p>(h) “Online service” includes cloud computing services</p> <p>(m) does not apply to general audience Internet Web sites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for operator’s site or service may be used to access those general audience sites or services</p> <p>(p) This does not impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance</p>	<p>Affected parties:</p> <p>“Operators” – defined in Sec 2.(3) as ...”an entity that operates as school service.”</p> <p>School service, per 2.(2) includes an Internet Web site, online service including a cloud computing service), online application, or mobile application that provides services to a school and is used for K-12 purposes and was designed and marketed for K-12 purposes. It does not include Internet access service.<sup>1</sup></p> <p>4(A)(7) This Act shall not impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with the Act by operators of school services</p>
	<p>(n) Internet service providers are not limited in providing Internet connectivity to schools or students and their families</p>	<p>4.(a) This Act shall not</p> <p>(4) limit a school from providing Internet access service for its own use, to other schools, or to students and their families</p>

<sup>1</sup> Note that this bill is targeted specifically at services designed and marketed at K-12 but does specifically include the general exclusion language to the effect that: “This Act shall not apply to general audience Internet Web sites, general audience online services, general audience online applications, or general audience mobile applications, outside of the school context, even if login credentials are created for an operator’s site, service, or application.”

<p>Not collect, maintain, use or share student personal information beyond that needed for authorized educational/school purposes, or as authorized by the parent/student.</p>	<p>1177                  (b) Operator shall not knowingly                  (4) Disclose covered information unless                  (A) in furtherance of the K-12 purpose of the site/service/app, and the recipient is likewise bound                  (B) to ensure legal/regulatory compliance                  (C) to respond to judicial process                  (D) to protect the safety of the user, or others, or security of the site                  (E) to a service provider who is contractually limited by the same restrictions as the operator                  (c) Nothing here prohibits use for maintaining, improving, diagnosing the site, service or application                  (e) Notwithstanding (b)(4) [above], an operator may disclose                  (1) if provisions of federal or state law require                  (2) for legitimate research purposes (subject to applicable restrictions, and as allowed by school agencies, for no purposes that advertise or amass a profile other than as directed by the school for K-12 purposes)                  (3) to SEAs/LEAs for K-12 purposes as permitted by law</p>	<p>3.(a) operator may not knowingly:                  (4) collect or use covered information...other than for K-12 purposes<sup>2</sup>                  (5) disclose covered information other than for K-12 purposes, unless disclosure is made –                  (A) pursuant to lawful process or to ensure legal and regulatory compliance with Federal or State law                  (B) <b>with the authorization of the school to which the operator provides the school service</b>                  (C) pursuant to a request ...                  (1) ...about a student from the parent...                  (2) ...about the parent/user..., from the parent/user...                  (D) pursuant to a request from a student or parent to disclose covered information to a third party in furtherance of postsecondary education or employment...                  (E) to protect safety of users or others or the security of the school service                  (F) for research, statistical, or evaluation purposes, including advancements in the science of learning, as permitted by Fed/State law                  (G) to a school, as permitted by Fed/State law</p>
<p>Not sell student personal information.</p>	<p>1177                  (b) Operator shall not knowingly                  (3) Sell a student’s information (does not prohibit mergers or acquisitions)</p>	<p>3.(a) An operator may not knowingly –                  (3) sell covered information to a third party, except pursuant to a request described in paragraph (5)(D)                  (5)(D) pursuant to a request from a student or parent to disclose covered information to a third party in furtherance of postsecondary education or employment...</p>

<sup>2</sup> In Sec. 4.(a)(1), this is further clarified that this act shall not be construed to affect or alter any protections or guarantees from FERPA, COPPA, or any other Federal statute relating to privacy protection. In addition, Sec. 4(c)(2) specifies that the Act does not modify the requirements or standards for consent, including consent from minors or employees on behalf of educational institutions, under any other provision of Federal or State law.

<p>Not use or disclose student information collected through an educational/school service (whether personal information or otherwise) for behavioral targeting of advertisements to students.</p>	<p>1177                  (b) Operator shall not knowingly                  (1)(A) engage in targeted advertising on the site, service or application (B) target advertising on any other site, service or application based on information acquired by use of the operator’s site                   (o) shall not be construed to prohibit an operator from marketing educational products directly to parents so long as did not result from the use of covered information obtained by the operator through services covered in this section</p>	<p>3.(a) An operator may not knowingly –                  (1) engage in or permit targeted advertising on a school service                  (2) collect, use, or disclose any covered information for purposes of targeted advertising<sup>3</sup>                   4.(a) This Act shall not –                  (6) be construed to prohibit an operator of a school service from marketing educational products directly to parents, provided that the marketing does not result from the use of covered information</p>
<p>Not build a personal profile of a student other than for supporting the authorized educational/school purposes or as authorized by the parent/student.</p>	<p>1177                  (b) Operator shall not knowingly                  (2) Use information, including persistent unique identifiers, created or gathered by the operator’s site, service, or application to amass a profile except in furtherance of K-12 school purposes</p>	<p>3.(a) an operator may not –                  (4) collect or use covered information (including using covered information to create a personal profile of a student) other than for K-12 purposes</p>
<p>Not make material changes to school service provider consumer privacy policies without first providing prominent notice to the account holder(s) (e.g., the educational institution/agency, or the parent/student when the information is collected directly from the student with student/parent consent) and allowing them choices before data is used in any manner inconsistent with terms they were initially provided; and not make material changes to other policies or practices governing the use of student personal information that are inconsistent with contractual requirements.</p>		<p>3.(b) An operator shall –                  (4) provide sufficient notice before making material changes to a contract or privacy policy for a school service                  (5) before collecting, using, or disclosing covered information in a manner that is inconsistent with the operator’s contract or privacy policy, obtain consent from the school or (either directly or through the school) from –                  (A) ...re student info, consent from the parent                  (B) ...re parent/user info, consent from parent/user</p>

<sup>3</sup> This Act defines “targeted marketing” – presenting advertisements to a student, where the advertisements are selected based on information obtained or inferred from the student’s online behavior or use of online applications or mobile applications or from information about the student maintained by the students’ school or the operator of a school service. Such term does not include presenting advertisements to a student at an online location or through an online application or mobile application where the advertisements are selected based on a single visit or session of use during which the advertisements are presented and information about the student’s online behavior or use of online applications or mobile applications is not collected or retained over time.

<p>Not knowingly retain student personal information beyond the time period required to support the authorized educational/school purposes, or as authorized by the parent/student.</p>	<p>1177 (d) An operator shall (2) Delete a student’s covered information if the school or district requests deletion of data under the control of the school or district</p>	<p>3.(b) An operator shall – (2) delete a student’s covered information within a reasonable time, not to exceed 45 days, after receiving –     (A) a request from the student’s school, or     (B) a request...from the parent, but only for deletion of information obtained through an optional feature of the school service chosen by the parent</p>
<p>Collect, use, share, and retain student personal information only for purposes for which we were authorized by the educational institution/agency, teacher or the parent/student.</p>		
<p>Disclose clearly in easily accessible contracts or privacy policies, including in a manner easy for parents and teachers to understand, what types of student personal information we collect, if any, and the purposes for which the information we maintain is used or shared with third parties.</p>		<p>3.(b) An operator shall – (3) disclose to each school to which the operator provides a school service, in contracts or privacy policies in a manner that is clear and easy to understand, the types of covered information collected, if any, and the purposes for which the covered information is used or disclosed to third parties</p>
<p>Support access to and correction of student personally identifiable information by the student or their authorized parent, either by assisting the educational institution in meeting its requirements or directly when the information is collected directly from the student with student/parent consent.</p>		<p>3.(b) An operator shall – (6) facilitate access to and correction of covered information, either directly or through a school –     (A) ...about student, by parent...     (B) ...about parent/user, by parent/user</p>

<p>Maintain a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against risks – such as unauthorized access or use, or unintended or inappropriate disclosure – through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information.</p>	<p>1177 (d) An operator shall (1) implement and maintain reasonable security procedures and practices...and protect that information</p>	<p>3.(b) An operator shall – (1) establish, implement, and maintain reasonable security procedures appropriate to the nature of covered information to protect the confidentiality, security, and integrity of covered information</p> <p><b>(7) implement policies and procedures for responding to data breaches involving unauthorized acquisition of or access to personally identifiable information that occur on a school service, in compliance with any obligations imposed by Fed or State law, and</b> <b>(8) notify the Commission and, as appropriate, students, parents, schools, or school officials (including teachers) of each data breach involving unauthorized acquisition of or access to personally identifiable information that occurs on a school service, in compliance with any obligations imposed by Fed or State law.</b></p>
<p>Require that our vendors with whom student personal information is shared in order to deliver the educational service, if any, are obligated to implement these same commitments for the given student personal information</p>	<p>1177 (4)(E) [above] information may be disclosed to a service provider, provided it is contractually bound to: (i) use the information only to provide the contracted service (ii) not provide covered information to subsequent 3<sup>rd</sup> parties (iii) maintain reasonable security procedures and practices</p>	<p>3.(a) an operator may not knowingly – (6) disclose covered information to a third-party service provider of the school service, unless the operator contractually – (A) prohibits the service provider from using any covered information for any purpose other than providing the contracted service to, or on behalf of, the operator; and (B) requires the service provider to establish, implement, and maintain reasonable security procedures as described in subsection (b)(1).</p>
<p>Allow a successor entity to maintain the student personal information, in the case of our merger or acquisition by another entity, provided the successor entity is subject to these same commitments for the previously collected student personal information</p>	<p>1177 (b)(3) The prohibition against selling student information does not apply to the purchase, merger, or other type of acquisition of an operator by another entity, provided that the successor entity continues to be subject to the provisions of this section</p>	<p>3.(c) The prohibitions of this section on disclosure of covered information do not apply to the merger of an operator with another entity or the acquisition of the operator by another entity, provided that the operator or successor entity continues to be subject to the provisions of this section with respect to covered information acquired before the merger acquisition</p>

	<p>1177                      (f) and (g) allow for using and sharing deidentified and aggregated deidentified student covered information to improve the site or service or product; to demonstrate the effectiveness of the product or service</p>	<p>4.(b) Nothing in this Act prohibits an operator from                      (1) using de-identified and aggregated covered information                      (A) within the operator’s school service or other sites, services, or applications owned by the operator to improve educational products, or                      (B) to demonstrate the effectiveness of the operator’s products or services, including in the marketing of such products or services; or                      (2) disclosing de-identified and aggregated covered information for research and development, including –                      (A) research, development and improvement of educational sites, services, and application and                      (B) advancements in the science of learning</p>
	<p>Sec1.(c) Nothing in subdivision (b) shall be construed to prohibit the operator’s use of information for maintaining, developing, supporting, improving, or diagnosing the operator’s site, service, or application.</p>	<p>4.(a) This Act shall not –                      (5) be construed to prohibit an operator’s use of covered information for maintaining, developing, supporting, improving, or diagnosing the operator’s school service</p>
<p><b>PLEDGE NOTES:</b></p>		
<p>Some school service providers may be subject to additional legal obligations, contractual commitments, or requests from educational institutions or parents/students that direct or otherwise authorize additional uses of student data, other than those specified above</p>	<p>1177                      (k) nothing shall be construed to limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or pursuant to court order                       (r) This section does not impede the ability of students to download, export, or otherwise save or maintain their own student created data or documents.</p>	<p>4.(a) This Act shall not –                      (2) be construed to limit the authority of a law enforcement agency to obtain content or information from an operator as authorized by law or pursuant to an order of a court                       4(a) This Act shall not –                      (8) impede the ability of an enrolled student or the student’s parent to download, export, create, or otherwise save or maintain data, documents, or non-commercial applications created by the student, except to the extent any such activity would result in disclosure prohibited by this Act of covered information of other students or users of a school service.</p>

<p>Nothing in this pledge is intended to prohibit the use of student personal information for authorized purposes of adaptive learning or customized education.</p>	<p>1177 (l) does not limit an operator from using student data, including covered information, for adaptive learning or customized student learning purposes</p>	<p>4.(a) This Act shall not – (3) limit the ability of an operator to use information, including covered information, for adaptive or personalized student learning purposes</p>
<p>This pledge is intended to be applicable to new contracts and policies going forward and addressed -- where inconsistent and as agreed to by the educational institution/agency -- in existing contracts as updated over time.</p>		
<p><b>DEFINITIONS:</b></p>		
<p>'Educational/School purposes' are services or functions that customarily take place at the direction of the educational institution/agency or their teacher/employee, for which the institutions or agency would otherwise use its own employees, and that aid in the administration or improvement of educational and school activities (e.g., instruction, administration, and development and improvement of products/services intended for educational/school use).</p>	<p>1177 (j) "K-12 school purposes" means purposes that customarily take place at direction of K-12 school, teacher or district...including classroom instruction, admin activities, collaboration between students/school/parents, for the use and benefit of the school</p>	<p>(4) Adds that K-12 purposes means purposes that aid in the administration of school activities, including instruction in the classroom or at home, administrative activities, preparing for postsecondary education or employment opportunities, and collaboration between students, school personnel, or parents, or are for the use and benefit of the school, and other purposes specified by a school or school official, including a teacher.</p>

<p>'Student personal information' is personally identifiable information as well as other information when it is both collected and maintained on an individual level and is linked to personally identifiable information</p>	<p>1177 (i) "Covered information" means PII or materials in any media or format that (1) is created or provided by a student or student's parent to an operator in the course of use of the site, service, or application for K-12 school purposes (2) is created or provided by an employee or agent of the K-12 school to an operator (3) is gathered by an operator through the operation of the site, service or application and is descriptive of the student or otherwise identifies the student including but not limited to: Education record, email, name, address, telephone number, discipline record, test results, juvenile records, criminal records, medical records, SSN, biometric info, disabilities, socioeconomic info, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings or geolocation information</p>	<p>6.(a) (2) The term "covered information" means personally identifiable information, and information that is linked or linkable to personally identifiable information, that— (A) is collected through a school service; and (B)(i) the operator of the school service knows or should know relates to a student; or (ii) is collected or maintained at the direction of a student's school or school officials, including teachers.  (see below for PII)<sup>4</sup></p>
--	--	---

<sup>4</sup> The term "personally identifiable information" includes, with respect to a student—

- (A) the student's first and last name;
- (B) the first and last name of the student's parent or another family member;
- (C) the home or physical address of the student or student's family;
- (D) online contact information for the student;
- (E) a personal identifier, such as the student's social security number, student number, or biometric record;
- (F) a persistent identifier that can be used to recognize a user over time and across different Internet websites, online services, online applications, or mobile applications, including a customer number held in a cookie, an Internet Protocol address, a processor or device serial number, or another unique identifier;**
- (G) a photograph, video, or audio recording that contains the student's image or voice;
- (H) geolocation information sufficient to identify street name and name of a city or town;
- (I) other indirect identifiers, such as the student's date of birth, place of birth, or mother's maiden name;
- (J) other information that, alone or in combination, would allow an operator or a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify a specific student with reasonable certainty; and
- (K) information requested by a person who the school reasonably believes knows the identity of the student to whom the information relates.



<p>'Student' applies to students of United States elementary and secondary schools, and with regard to notice and consent applies only to students of appropriate age as authorized under relevant United States federal law.</p>		<p>6.(a) (7) The term "student" means any individual who is or has been enrolled in an elementary school or secondary school.</p>
<p>'Consumer privacy policies' include those privacy policies that are posted by the company to be available to all users to the site or service.</p>		
<p>'Parent' includes a student's legal guardian.</p>	<p>Language throughout says "parent or legal guardian"</p>	<p>Language throughout refers to "student's parent."  4.(c)(1) clarifies that for "eligible students" all references to "consent of the student's parent," should be considered to refer to the consent of the eligible student.</p>
		<p>6.(a)(4) "Online Contact Information" means, for a student, an email address or any other similar identifier that permits direct contact with the student online, including identifiers for IM, VOIP, video chat, or screen/user names that permit contact</p>
<p><b>OTHER KEY REQUIREMENTS:</b></p>		
		<p>3.(d) This section [Section 3] shall continue to apply, after a student is no longer enrolled in an elementary or secondary school, to covered information on the student while the student was enrolled.</p>
		<p>Sec. 5 (a), (b), (c) Enforcement is via the FTC, which is given regulatory authority to carry out this Act. (a)(3) This Act applies to Non-Profit Organizations (d) The FTC must consult with the Sec of Education for implementing, enforcing, and promulgating regulations (f) The Sec of Education must provide schools with reasonable guidance and assistance to prevent and respond to breaches that occur on a school service.</p>

		<p>Sec 5 (g) This Act does not annul, alter, or affect, or exempt ... compliance with State laws (on) the treatment of covered information by operators of school services, except to the extent such laws are inconsistent, and then only to the extent of the inconsistency. A State law is not inconsistent if the protection it affords...is greater than the protection in this Act. This includes laws of political subdivisions of the State.</p>
--	--	--