

CLIENT NEWS BRIEF

Student Privacy Issues and Technology Addressed in Three New Bills

Three new bills intended to protect students in cyberspace recently became law, including a bill that affects how educational agencies contract for technology services. These new laws are the result of a fast changing landscape educators must navigate in order to provide students with state of the art technology. Until now, state law was largely silent on the specific rules applicable to student privacy in the cyber world. In response to a demand for guidance, Assembly Bill (AB) 1584, Senate Bill (SB) 1177, and AB 1442 address how students, parents, educators and technology vendors interact with each other when it comes to protecting students online.

New Provisions That Must be Included in Contracts for Cloud Computing Services, Digital Storage, and Educational Software Agreements Involving Pupil Records

AB 1584 requires the inclusion of new contract provisions in the contracts between educational agencies and vendors for cloud computing services, digital storage, and educational software related to pupil records. The bill adds Education Code section 49073.1, which will apply to school districts, county offices of education and charter schools. In order to enter into such contracts, educational agencies must now have board policies authorizing these types of arrangements. This appears to be a conscious effort by the Legislature to involve educational agency governing boards in making policy revisions as to how student information will be stored, transmitted or handled on-line. Failure to comply with the new requirements may void the contract.

As of January 1, 2015, such technology agreements must include provisions that:

- State student records are the property of the educational agency;
- Allow students to retain control over their pupil-generated information;
- Prevent third parties from using information for any purpose other than those specified in the contract;
- Describe a process allowing parents to review and correct personally identifiable information;
- Describe actions a third party will take to ensure the confidentiality and security of the pupil records;
- Describe a process by which parents are notified of a security breach;
- Require a certification declaring that pupil records shall not be retained or available to a third party upon completion of the contract;
- Describe how the educational agency and third parties will comply with the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); and
- Prohibit a third party from using identifiable information in pupil records to engage in targeted advertising.

Online Service Providers Must Now Protect Student Information

SB 1177 will add Business and Professions Code section 22584, requiring

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operators of educational internet websites, online services, online applications, and mobile applications to refrain from practices that compromise the security of student information or impinge on student privacy. As of January 1, 2015, online vendors that provide services to K-12 students, whether in the classroom or at home, are prohibited from advertising to students and using, selling or disclosing information gathered from students, with limited exceptions. Additionally, technology vendors must implement and maintain reasonable security measures to protect student data. This bill also empowers schools and school districts with the right to demand that technology vendors delete their copies of student data.

Limitations on Gathering and Using Information from Social Media

AB 1442 limits the types of information an educational agency may collect from social media sources regarding students. The bill adds Education Code section 49073.6, which will apply to school districts, county offices of education and charter schools as of January 1, 2015. Under this statute, educational agencies that consider establishing a program to collect information from social media sources regarding students must first notify student and parents of the proposal, and give the public an opportunity to comment on the proposal at a regularly scheduled meeting of the educational agency's governing board. The notice and comment period is a prerequisite to the educational agency's ability to collect and use student information gathered from any social media source.

Once the program is established, the educational agency may only collect information that is directly related to school or pupil safety. Like traditional student records, students and parents are entitled to access the information educational agencies gather from social media, and have the right to challenge the veracity of the information. However, unlike other student records, the information gathered from social media sources must be destroyed within one year of the student turning 18, or from the student's departure from the educational agency, whichever occurs first. The statute also provides protections against third party use of the information gathered where the district contracts with a third party to gather such information. Contracts with third parties will likely need to incorporate certain of these statutory requirements.

Over the years, Lozano Smith has been on the forefront in advising school districts on legal issues related to the use of technology, including protecting student and employee information. Preparing students for the 21st century is sometimes hindered by 20th century laws, making it all the more important to give thought to how new technology can be used. Many of the new laws discussed above have at last begun to give express legal authority in support of best practices that we have recommended and our clients have implemented in recent years. The new laws may prove particularly helpful when dealing with larger internet, software and cloud computing providers, who have sometimes resisted these types of specific protections.

Our Technology and Innovation practice area has years of experience in reviewing and drafting technology-related contracts, advising on social media issues, developing email retention and electronic communications policies, and providing counsel to school districts and municipalities on a wide array of emerging technology matters. If you have any questions regarding such matters, please contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).