

Effective 5/10/2016

53A-1-1410 Third-party contractors -- Use and protection of student data -- Contract requirements -- Completion of contract -- Required and allowed uses of student data -- Restrictions on the use of student data -- Exceptions.

- (1) A third-party contractor shall use personally identifiable student data received under a contract with an education entity strictly for the purpose of providing the contracted product or service.
- (2) When contracting with a third-party contractor, an education entity shall require the following provisions in the contract:
 - (a) requirements and restrictions related to the collection, use, storage, or sharing of student data by the third-party contractor that are necessary for the education entity to ensure compliance with the provisions of this part and board rule;
 - (b) a description of a person, or type of person, including an affiliate of the third-party contractor, with whom the third-party contractor may share student data;
 - (c) provisions that, at the request of the education entity, govern the deletion of the student data received by the third-party contractor;
 - (d) except as provided in Subsection (4) and if required by the education entity, provisions that prohibit the secondary use of personally identifiable student data by the third-party contractor; and
 - (e) an agreement by the third-party contractor that, at the request of the education entity that is a party to the contract, the education entity or the education entity's designee may audit the third-party contractor to verify compliance with the contract.
- (3) As authorized by law or court order, a third-party contractor shall share student data as requested by law enforcement.
- (4) A third-party contractor may:
 - (a) use student data for adaptive learning or customized student learning purposes;
 - (b) market an educational application or product to a parent or legal guardian of a student if the third-party contractor did not use student data, shared by or collected on behalf of an education entity, to market the educational application or product;
 - (c) use a recommendation engine to recommend to a student:
 - (i) content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or
 - (ii) services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;
 - (d) respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party; or
 - (e) use student data to allow or improve operability and functionality of the third-party contractor's internal application.
- (5) At the completion of a contract with an education entity, if the contract has not been renewed, a third-party contractor shall:
 - (a) return all personally identifiable student data to the education entity; or
 - (b) as reasonable, delete all personally identifiable student data related to the third-party contractor's work.
- (6)
 - (a) A third-party contractor may not:
 - (i) except as provided in Subsection (6)(b), sell student data;

- (ii) collect, use, or share student data, if the collection, use, or sharing of the student data is inconsistent with the third-party contractor's contract with the education entity; or
 - (iii) use student data for targeted advertising.
- (b) A person may obtain student data through the purchase of, merger with, or otherwise acquiring a third-party contractor if the third-party contractor remains in compliance with this section.
- (7) A provider of an electronic store, gateway, marketplace, or other means of purchasing an external application is not required to ensure that the external application obtained through the provider complies with this section.
- (8) The provisions of this section do not:
 - (a) apply to the use of an external application, including the access of an external application with login credentials created by a third-party contractor's internal application;
 - (b) apply to the providing of Internet service; or
 - (c) impose a duty on a provider of an interactive computer service, as defined in 47 U.S.C. Sec. 230, to review or enforce compliance with this section.

Enacted by Chapter 221, 2016 General Session