

P.L. 2019, CHAPTER 494, *approved January 21, 2020*  
Assembly, No. 4978 (*Fourth Reprint*)

1 AN ACT concerning online education services and student  
2 educational records and supplementing P.L.1960, c.39 (C.56:8-1  
3 et seq.).  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. As used in P.L. , c. (C. ) (pending before the Legislature  
9 as this bill):

10 <sup>3</sup>["Cloud computing service" means a service that enables on-  
11 demand self-service network access to a shared pool of configurable  
12 computer resources to provide a student account-based productivity  
13 applications, including, but not limited to, electronic mail, document  
14 storage, and document editing, which can be rapidly provisioned and  
15 released with minimal management effort or cloud computing service  
16 provider interaction.]

17 "Covered information" means personally identifiable information  
18 or material, or information that is linked to personally identifiable  
19 information or material, in any media or format that is not publicly  
20 available and is:

21 created by or provided to an operator by a student, or the student's  
22 parent or guardian, in the course of the student's, parent's, or  
23 guardian's use of the operator's site, service, or application for K-12  
24 school purposes;

25 created by or provided to an operator by an employee or agent of a  
26 K-12 school or school district for K-12 school purposes; or

27 gathered by an operator through the operation of its site, service, or  
28 application for K-12 school purposes and personally identifies a  
29 student, including, but not limited to, information in the student's  
30 education record or electronic mail, first and last name, home address,  
31 telephone number, electronic mail address, or other information that  
32 allows physical or online contact with the student, discipline records,  
33 test results, special education data, juvenile dependency records,  
34 grades, evaluations, criminal records, medical records, health records,  
35 social security number, biometric information, disabilities,  
36 socioeconomic information, persistent unique identifiers, food

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AST committee amendments adopted February 14, 2019.

<sup>2</sup>Assembly floor amendments adopted February 25, 2019.

<sup>3</sup>Assembly floor amendments adopted June 10, 2019.

<sup>4</sup>Assembly amendments adopted in accordance with Governor's recommendations January 13, 2020.

1 purchases, political affiliations, religious information, text messages,  
2 documents, student identifiers, search activity, photographs, voice  
3 recordings, or geolocation data.<sup>3</sup>

4 "De-identified data" means information that <sup>3</sup>**【**does not identify an  
5 individual and for which there is no reasonable basis to believe that the  
6 information can be used to identify an individual**】** is not or can no  
7 longer be linked or reasonably linkable to a person or the person's  
8 computer, telecommunications device, or wireless telecommunications  
9 device, but which may still contain unique records or attributes. "De-  
10 identified data" shall not mean covered information<sup>3</sup>.

11 <sup>3</sup>**【**"Educational record" means an official record, file, or data, in  
12 any medium or format, directly related to the student of an online  
13 education service as provided by a student, parent, legal guardian,  
14 school, or school district in the course of the student's use of the online  
15 education service, including, but not limited to, records encompassing  
16 all the material stored or recorded in the student's cumulative folders,  
17 files, or applications, such as general identifying data, electronic mail  
18 addresses, records of academic work, records of achievement, results  
19 of evaluative tests, health data, test protocols, criminal records,  
20 biometric information, food purchases, political affiliations, search  
21 activity, persistent unique identifiers, photos, voice recordings, global  
22 positioning system data, and individualized education plans or  
23 programs.**】**

24 "Interactive computer service" shall have the same meaning as  
25 provided in 47 U.S.C. s.230.

26 "K-12 school" means a public school that offers any of grades  
27 kindergarten to 12 and that is operated by any school district in this  
28 State.

29 "K-12 school purposes" means purposes that are directed by or that  
30 customarily take place at the direction of a school district, K-12  
31 school, teacher, or school district or aid in the administration of school  
32 activities, including, but not limited to, instruction in the classroom or  
33 at home, administrative activities, and collaboration between students,  
34 school personnel, or parents or guardians, or are otherwise for the use  
35 of a benefit of the school district or K-12 school.<sup>3</sup>

36 "Online education service" or "service" means an Internet website,  
37 online service, online computer application, <sup>3</sup>**【**cloud computing  
38 service,**】**<sup>3</sup> or mobile application <sup>3</sup>**【**designed, marketed, and offering  
39 education for grades kindergarten through 12, or any combination  
40 thereof, to supplement, or use in lieu of, physical attendance at a  
41 private or public school in this State**】** that is used primarily for K-12  
42 school purposes and is designed and marketed for K-12 school  
43 purposes<sup>3</sup>.

44 "Operator" means the <sup>1</sup>**【**operator**】** <sup>3</sup>**【**owner<sup>1</sup>**】** operator<sup>3</sup> of an  
45 online education service with actual knowledge that the online  
46 education service is used primarily for K-12 school purposes and is  
47 designed and marketed for K-12 school purposes<sup>3</sup>.

1 “Persistent unique identifier” means a digital label given to an  
2 object, such as a digital file, or entity, such as a person, which is used  
3 on the online education service.

4 <sup>3</sup>“Process” or “processing” means to use, access, manipulate,  
5 scan, modify, transform, disclose, store, transmit, transfer, retain,  
6 aggregate, or dispose of educational records.】

7 “Personally identifiable information” means information that is  
8 linked or reasonably linkable to an identified or identifiable person.  
9 “Personally identifiable information” shall not include de-identified  
10 data or publicly available information.

11 “Publicly available information” means information that is  
12 lawfully made available from federal, State, or local government  
13 records.

14 “Recommendation engine” means software that uses an  
15 algorithm to predict and recommend what information, product, or  
16 item a student may prefer.

17 “School district” means any school district established pursuant to  
18 Title 18A of the New Jersey Statutes.<sup>3</sup>

19 “Student” means a minor user of an online education service.

20 <sup>3</sup>“Targeted advertising” means the presenting of advertisements to  
21 a student where the advertisement is selected based on information  
22 obtained or inferred over time from that student’s online behavior, use  
23 of Internet websites, online services, online computer applications, or  
24 mobile applications, or covered information. “Targeted advertising”  
25 shall not include advertising to a student at an online location based  
26 upon that student’s current visit to that location, or in response to that  
27 student’s request for information or feedback, without the retention of  
28 the student’s online activities or requests over time for the purpose of  
29 targeting subsequent advertisements.<sup>3</sup>

30  
31 2. a. An operator of an online education service shall not  
32 knowingly:

33 (1) use information, including <sup>3</sup>【educational】 covered  
34 information<sup>3</sup>, created or gathered by the <sup>3</sup>【operator】 operator’s  
35 online education service<sup>3</sup>, to amass a profile about a student for any  
36 purpose other than <sup>3</sup>【the furtherance of the student’s kindergarten  
37 through 12 grade education】 K-12 school purposes. A profile shall  
38 not include the collection and retention of account information that  
39 remains under the control of the student, the student’s parents or  
40 guardian, or K-12 school<sup>3</sup>;

41 (2) sell <sup>3</sup>【an educational record to any person unless sold in the  
42 course of the purchase, merger, or other type of acquisition of an  
43 online education service by another entity, provided that the online  
44 education service continues to be subject to the provisions of this  
45 section with respect to previously acquired student educational  
46 records】 or rent a student’s information, including covered  
47 information. This paragraph shall not apply to the purchase, merger,

1 or other type of acquisition of an operator by another entity if the  
2 operator or successor entity complies with this section concerning  
3 previously acquired student information, including covered  
4 information, or to national assessment providers if the provider  
5 secures express written consent of <sup>4</sup>the student or<sup>4</sup> the student's  
6 parent or guardian, given in response to clear and conspicuous  
7 notice, solely to provide access to employment, educational  
8 scholarships, financial aid, or postsecondary educational  
9 opportunities<sup>3</sup>; <sup>3</sup>[and]<sup>3</sup>

10 (3) disclose <sup>3</sup>[an educational record collected or maintained by  
11 the online education service] covered information<sup>3</sup> unless the  
12 disclosure is:

13 (a) made in furtherance of the <sup>3</sup>[educational purpose] K-12  
14 school purposes<sup>3</sup> purpose of the service, provided the recipient of  
15 the <sup>3</sup>[educational record] covered information<sup>3</sup> shall not further  
16 disclose the information unless done to allow or improve the  
17 operability and functionality <sup>3</sup>[within that student's classroom or  
18 school] of the operator's online education service<sup>3</sup>;

19 (b) required by federal or State law <sup>3</sup>to protect against liability<sup>3</sup>;

20 (c) made to respond to or participate in a judicial process;

21 (d) to protect the safety of students or security of the service;

22 <sup>3</sup>[or]

23 (e) for educational or employment purposes requested by the  
24 student's parent or guardian, provided that the covered information  
25 is not used or further disclosed for any other purpose not requested  
26 by the student's parent or guardian;

27 (f) to a third party if the operator contractually prohibits the  
28 third party from using any covered information for any purpose  
29 other than providing the contracted service to or on behalf of the  
30 operator, prohibits the third party from disclosing any covered  
31 information provided by the operator with subsequent third parties,  
32 and requires the third party to implement and maintain reasonable  
33 security procedures and practices; or

34 (g)<sup>3</sup> for legitimate research purposes <sup>3</sup>[made in accordance  
35 with] , subject to the requirements of<sup>3</sup> paragraphs (1) through (3) of  
36 this subsection <sup>1</sup>[.]<sup>1</sup>:

37 (i) as required by federal or State law and subject to the  
38 restrictions of <sup>3</sup>the<sup>3</sup> application of federal or State law; <sup>3</sup>[or]<sup>3</sup>

39 (ii) as allowed by federal or State law and under the direction of  
40 a <sup>3</sup>K-12<sup>3</sup> school, school district, or the Department of Education, if  
41 no <sup>3</sup>[educational record] covered information<sup>3</sup> is used for any  
42 purpose in furtherance of advertising or to amass a profile on the  
43 student for any purpose that is not in furtherance of <sup>3</sup>[kindergarten  
44 through 12 grade education] a K-12 school purpose<sup>3</sup>; <sup>3</sup>or<sup>3</sup>

45 (iii) for use by a federal, State, or local educational agency,  
46 including <sup>3</sup>K-12<sup>3</sup> schools and school districts, for <sup>3</sup>[kindergarten

1 through 12 grade educational] K-12 school<sup>3</sup> purposes, as permitted  
2 by federal or State law <sup>3</sup>; and

3 (4) engage in targeted advertising on the operator's service, or  
4 target advertising on any other Internet website, online service,  
5 online computer application, or mobile application if the targeted  
6 advertising is based on any information, including covered  
7 information, that the operator's service has acquired because of the  
8 use of the operator's service for K-12 school purposes<sup>3</sup>.

9 b. Nothing in this section shall be construed to prohibit the  
10 operator's use of <sup>3</sup>[educational records] covered information<sup>3</sup> for  
11 maintaining, developing, supporting, <sup>3</sup>diagnosing,<sup>3</sup> or improving  
12 the operator's online education service.

13  
14 3. An operator of an online education service shall:

15 a. implement and maintain reasonable security procedures and  
16 practices appropriate to the nature of the <sup>3</sup>[educational record]  
17 covered information<sup>3</sup>;

18 b. protect that information from unauthorized access,  
19 destruction, use, modification, or disclosure; and

20 c. delete <sup>3</sup>[an educational record] covered information<sup>3</sup> at the  
21 request of a <sup>3</sup>K-12<sup>3</sup> school or a school district overseeing the  
22 student's education through the service or a student who has  
23 subsequently reached the age of majority <sup>3</sup>, unless a student after  
24 having reached the age of majority or parent or guardian requests  
25 that the operator maintain the covered information<sup>3</sup>.

26  
27 4. Nothing in P.L. , c. (C. ) (pending before the  
28 Legislature as this bill) shall be construed to prohibit an operator of  
29 an online education service from using de-identified data <sup>3</sup>[as  
30 follows] to<sup>3</sup>:

31 a. <sup>3</sup>[to]<sup>3</sup> improve the educational products within the service  
32 owned by the operator; <sup>3</sup>[or]<sup>3</sup>

33 b. <sup>3</sup>[to]<sup>3</sup> demonstrate the effectiveness of the operator's  
34 products or services, including their marketing <sup>3</sup>;

35 c. develop or improve websites, online services, or online or  
36 mobile applications for K-12 school purposes;

37 d. use a recommendation engine to recommend to a student  
38 additional content or services concerning an educational or  
39 employment opportunity purpose on an Internet website, online  
40 service, online computer application, or mobile application if the  
41 recommendation is not determined in whole or in part by payment  
42 or other consideration from a third party; or

43 e. respond to a student's request for information or for  
44 feedback if the information or response is not determined, in whole  
45 or in part, by payment or other consideration from a third party<sup>3</sup>.

- 1       <sup>3</sup>5. Nothing in P.L. , c. (C. ) (pending before the  
2 Legislature as this bill) shall be construed to:
- 3       a. limit the authority of a law enforcement agency to obtain  
4 any content or information from an operator as authorized by law or  
5 under a court order;
- 6       b. limit the ability of an operator to use student data, including  
7 covered information, for adaptive learning or customized student  
8 learning purposes;
- 9       c. apply to general audience Internet websites, general  
10 audience online services, general audience online applications, or  
11 general audience mobile applications, even if login credentials  
12 created for an operator's website, service, or application may be  
13 used to access those general audience websites, services, or  
14 applications;
- 15       d. limit service providers from providing Internet connectivity  
16 to schools or students and their families;
- 17       e. prohibit an operator from marketing educational products  
18 directly to parents or guardians if the marketing did not result from  
19 the use of covered information obtained by the operator through the  
20 provision of services pursuant to P.L. , c. (C. ) (pending  
21 before the Legislature as this bill);
- 22       f. impose a duty upon a provider of an electronic store,  
23 gateway, marketplace, or other means of purchasing or  
24 downloading software or applications to review or enforce  
25 compliance with P.L. , c. (C. ) (pending before the  
26 Legislature as this bill) on the software of applications;
- 27       g. impose a duty upon a provider of an interactive computer  
28 service to review or enforce compliance with P.L. , c. (C. )  
29 (pending before the Legislature as this bill) by a third-party content  
30 provider; or
- 31       h. prohibit students from downloading, exporting, transferring,  
32 saving, or maintaining their own student data or documents.<sup>3</sup>

33

34       <sup>3</sup>[5.] 6.<sup>3</sup> It shall be an unlawful practice pursuant to P.L.1960,  
35 c.39 (C.56:8-1 et seq.) for an operator of an online education  
36 service to violate the provisions of P.L. , c. (C. ) (pending  
37 before the Legislature as this bill), or any rule or regulation adopted  
38 pursuant thereto.

39

40       <sup>3</sup>[6.] 7.<sup>3</sup> The Director of the Division of Consumer Affairs in  
41 the Department of Law and Public Safety <sup>2</sup>, in consultation with the  
42 Commissioner of Education,<sup>2</sup> shall adopt, pursuant to the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
44 seq.), rules and regulations necessary to effectuate the purposes of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill).

1       <sup>3</sup>[7.] 8.<sup>3</sup> This act shall take effect immediately, but shall  
2 remain inoperative for 180 days following the date of enactment.

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7       Prohibits online education services from using and disclosing  
8 certain information, engaging in targeted advertising, and requires  
9 deletion of certain information in certain circumstances.