

HOUSE No. 4405

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, August 18, 2025.

The committee on Education, to whom was referred the petition (accompanied by bill, House, No. 633) of Kate Lipper-Garabedian, Jeffrey N. Roy and Lindsay N. Sabadosa relative to student and educator data privacy, reports recommending that the accompanying bill (House, No. 4405) ought to pass.

For the committee,

KENNETH I. GORDON.

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**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act relative to student and educator data privacy.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 71 of the General Laws is hereby amended by inserting after section 34H the
2 following four sections:-

3 Section 34I. As used in sections 34I through 34L, the following words shall, unless the
4 context clearly requires otherwise, have the following meanings:

5 “Aggregated data”, data collected and reported at the group, cohort, school, school
6 district, region or state level that is aggregated using protocols that are both intended and
7 reasonably likely to preserve the anonymity of each individual.

8 “Board”, the board of elementary and secondary education.

9 “Commissioner”, the commissioner of the department of elementary and secondary
10 education.

11 "Covered information", . information, data or records, inclusive of student records as
12 defined in the board’s regulations, that, alone or in combination, can be used to identify a

13 specific student, teacher, principal, administrator or student’s family member and that is: (i)
14 created by or provided to an operator by a student, or the student's parent or legal guardian, in the
15 course of the student's, parent's or legal guardian's use of the operator's site, service or
16 application for K-12 school purposes; (ii) created by or provided to an operator by an employee
17 or agent of a school district or K-12 school for K-12 school purposes; (iii) gathered by an
18 operator through the operation of its site, service or application for K-12 school purposes and
19 personally identifies a student; or (iv) gathered by an operator through the operation of its site,
20 service or application in connection with performance evaluations conducted pursuant to section
21 38 of this chapter and that personally identifies a teacher, principal or administrator.

22 For a student, covered information includes, information or material that, alone or in
23 combination with other information or material, is linked or could be linked to a student in a
24 manner that would allow an employee or a student at the student’s school to identify the student
25 with reasonable certainty. Said information or material includes, but is not limited to,
26 information in the student's educational record or electronic mail, including student-generated
27 work; first and last name; home address and geolocation information; telephone number;
28 electronic mail address or other information that allows physical or online contact; discipline
29 records; test results, grades and student evaluations; special education data; juvenile dependency
30 records; criminal records; medical records and health records; social security number; student
31 identifiers; biometric information; socioeconomic information; food purchases; political and
32 religious affiliations; text messages; student identifiers; search activity and online behavior or
33 usage of applications when linked or linkable to a student; photographs; voice recordings; and
34 persistent unique identifiers.

35 “De-identified data”, records and information from which all personally identifiable
36 information has been removed or obscured such that the remaining information does not
37 reasonably identify a specific individual, including, but not limited to, any information that alone
38 or in combination is linkable to a specific individual.

39 “Department”, the department of elementary and secondary education.

40 “Destroy”, action taken in the normal course of business that is intended, and what a
41 reasonable person would believe in the context of the information’s medium, to make such
42 information permanently irretrievable.

43 “District” or “school district”, the school department of a city or town, regional school
44 district, vocational or agricultural school, independent vocational school or charter school.

45 “Educational entity”, a state educational agency, school district, K-12 school or
46 subdivision thereof, education collaborative as defined in section 4E of chapter 40, approved
47 public or private day and residential school providing special education services to publicly
48 funded eligible students pursuant to chapter 71B or institutional K-12 school program overseen
49 by a state agency including the department of youth services, the department of mental health or
50 the department of public health as well as employees acting under the authority or on behalf of
51 an educational entity.

52 “K-12 school”, a school that offers any of grades kindergarten to 12 and that is operated
53 by a school district; provided, further, that a K-12 school shall include any preschool or
54 prekindergarten program or course of instruction provided by a school district.

55 “K-12 school purposes”, uses that are directed by or that customarily take place at the
56 direction of a school district, K-12 school or teacher or that aid in the administration of school
57 activities, including, but not limited to, instruction in the classroom or at home, administrative
58 activities and collaboration between students, school personnel or parents, activities related to
59 students educational growth and experiences, or that are otherwise for the use and benefit of the
60 K-12 school; provided, further, that K-12 school purposes shall include comparable purposes in
61 the administration of any preschool or prekindergarten program or course of instruction provided
62 by a school district.

63 “Operator”, a person or entity operating in accordance with an agreement with an
64 educational entity to provide an Internet website, online service, online application or mobile
65 application for K-12 school purposes or at the direction of an educational entity or an employee
66 of an educational entity; provided, however, that this definition shall not apply to the department,
67 school district, K-12 school or other educational entity.

68 “Persistent unique identifier”, an identifier that can be used to recognize a consumer, a
69 family or a device that is linked to a consumer or family over time and across different services,
70 including, but not limited to: (i) a device identifier; (ii) an Internet Protocol address; (iii) cookies,
71 beacons, pixel tags, mobile ad identifiers or similar technology; (iv) customer number, unique
72 pseudonym or user alias; or (v) telephone number or other forms of persistent or probabilistic
73 identifiers that can be used to identify a particular consumer or device; provided, however, that
74 for the purposes of this definition “family” means a custodial parent or guardian and any minor
75 children over which the parent or guardian has custody.

76 “Targeted advertising”, presenting or serving advertisements to a student where the
77 substance, time or manner of the advertisement is determined based in whole or in part on
78 information obtained or inferred over time from that student's online behavior, usage of
79 applications or covered information. It does not include advertising to a student at an online
80 location based upon that student's current visit to that location or in response to that student’s
81 request for information or feedback without the retention of that student's online activities or
82 requests over time for the purpose of targeting subsequent advertisements.

83 Section 34J. (a) An operator shall not, with respect to its site, service or application:

84 (1) engage in targeted advertising on the operator’s site, service or application, or
85 targeted advertising on any other site, service or application if the targeting of the advertising is
86 based on any information, including covered information and persistent unique identifiers, that
87 the operator has acquired because of the use of that operator's site, service or application for K-
88 12 school purposes;

89 (2) use covered information, including persistent unique identifiers, created or gathered
90 by the operator's site, service or application, to amass a profile about a student or a teacher,
91 principal or administrator except in furtherance of K-12 school purposes;

92 (3) sell or rent a student’s information, including covered information; provided,
93 however, that this subsection shall not apply to the purchase, merger or other type of acquisition
94 of an operator by another entity, if the operator or successor entity complies with sections 34I
95 through 34L of this chapter, or to national assessment providers if the national assessment
96 provider secures the express written consent of the parent or student if 18 years old, given in

97 response to clear and conspicuous notice solely to provide access to employment, educational
98 scholarships or financial aid or postsecondary educational opportunities; or

99 (4) disclose covered information; provided, however, that an operator may disclose
100 covered information of a student so long as clauses (1) through (3), inclusive, of this subsection
101 are not violated, under the following circumstances:

102 (i) if provisions of federal or state law require the operator to disclose the information,
103 and the operator complies with the requirements of federal and state law in protecting and
104 disclosing that information;

105 (ii) for research purposes with the approval of the relevant educational entity and in
106 compliance with and subject to the restrictions of state and federal law; provided, however, that
107 the information shall be de-identified prior to being disclosed and that the operator shall share
108 research results with the educational entity in advance of any public dissemination; or

109 (iii) to an educational entity, including a K-12 school and school district, for K-12 school
110 purposes, as permitted by state or federal law.

111 (b) An operator shall:

112 (1) implement and maintain reasonable security procedures and practices appropriate to
113 the nature of the covered information designed to protect that covered information from
114 unauthorized access, destruction, use, modification or disclosure and in compliance with
115 regulations promulgated by the board pursuant to section 34L of this chapter; and

116 (2) immediately return or destroy covered information if requested by the educational
117 entity or when covered information is no longer required for K-12 school purposes or other
118 lawful purposes, such as complying with a judicial order or law enforcement request.

119 (c) Subject to the provisions of this section, an operator may use de-identified data to
120 maintain, develop, support, improve or diagnose the operator's site, service or application.
121 Subject to the provisions of this section, an operator may use aggregated or de-identified student
122 information to demonstrate the effectiveness of the operator's products or services, including
123 marketing or within the operator's site, service or application or other sites, services or
124 applications owned by the operator to improve educational purposes.

125 (d) Nothing in this section shall be construed to: (1) limit the authority of a law
126 enforcement agency to obtain any content or information from an operator as authorized by law
127 or pursuant to an order of a court of competent jurisdiction; (2) limit the ability of an operator to
128 use student data, including covered information, for adaptive learning or customized student
129 learning purposes; (3) apply to general audience Internet websites, general audience online
130 services, general audience online applications or general audience mobile applications, even if
131 login credentials created for an operator's site, service or application may be used to access those
132 general audience sites, services or applications; (4) limit service providers from providing
133 Internet connectivity to schools or students and their families; (5) prohibit an operator of an
134 Internet website, online service, online application or mobile application from marketing
135 educational products directly to parents if the marketing did not result from the use of covered
136 information obtained by the operator through the provision of services covered under this
137 section; (6) impose a duty upon a provider of an electronic store, gateway, marketplace or other
138 means of purchasing or downloading software or applications to review or enforce compliance

139 with this section on those applications or software; or (7) prohibit students from downloading,
140 exporting, transferring, saving or maintaining their own data or documents.

141 (e) An aggrieved student or educational entity may institute a civil action against an
142 operator for damages or to restrain a violation of this section and may recover: (1) up to \$10,000
143 for each disclosure that violates this section; (2) up to \$10,000 for each adverse action that
144 violates this section, or actual damages, whichever amount is higher; (3) punitive damages if a
145 court determines that a violation was willful; and (4) reasonable attorneys' fees and other
146 litigation costs reasonably incurred.

147 (f) The commissioner may bar an operator that improperly discloses covered information
148 from receiving access to student and educator evaluation records of any educational entity in the
149 commonwealth for a period of no less than five years.

150 Section 34K. (a) Any contract or agreement that is entered between an educational entity
151 and an operator, as defined in section 34I, pursuant to which the operator sells, leases, provides,
152 operates or maintains a service that grants access to covered information or creates any covered
153 information, including, but not limited to (i) any cloud-based services for the digital storage,
154 management and retrieval of pupil records or (ii) any digital software that authorizes an operator
155 to access and acquire student records, shall contain:

156 (1) a description of the covered information collected, stored and managed and a
157 statement that covered information and student records continue to be the property and under the
158 control of the educational entity;

159 (2) a prohibition against the operator using covered information for commercial or
160 advertising purposes or for any purpose other than K-12 school purposes;

161 (3) a description of the procedures by which a parent, legal guardian or eligible student
162 may review the student's records and work with the educational entity to correct erroneous
163 information, in accordance with state and federal law;

164 (4) a requirement that only persons, whether they are employees of the operator or other
165 persons, such as employees of subcontractors, with a legitimate need to access covered
166 information to support professional roles consistent with the terms of the contract or agreement
167 and federal and state law shall have access to it, with either the identification of said persons or
168 an agreement to identify said persons upon request;

169 (5) a description of the reasonable administrative, technical and physical safeguards
170 including with respect to encryption technology to protect covered information while in motion
171 or in the operator's custody that the operator will employ to protect the security, confidentiality
172 and integrity of covered information in its custody; provided, however, compliance with this
173 requirement shall not, in itself, absolve the operator of liability in the event of an unauthorized
174 disclosure of covered information;

175 (6) a description of the procedures for notifying any and all affected parties in the event
176 of an unauthorized disclosure of covered information or any breach of security resulting in an
177 unauthorized release of covered information, provided that the procedures shall comply with
178 chapter 444 of the acts of 2018 and implementing regulations;

179 (7) a certification that covered information shall be returned or destroyed by the operator
180 upon completion of the terms of the contract; and

181 (8) a description of how the educational entity and the operator will jointly ensure
182 compliance with applicable federal and state law, including, but not limited to, 20 U.S.C. section
183 1232g, 15 U.S.C. section 6501 et. seq. and sections 34A through 34L, inclusive, of this chapter.

184 (b) Any contract that fails to comply with the requirements of this section shall be
185 voidable and all covered information and student records in possession of an operator or any
186 third party shall be returned to the educational entity or, if the return of such information is not
187 technologically feasible, destroyed.

188 Section 34L. (a) The board shall promulgate regulations that establish data security and
189 privacy responsibilities of the department and educational entities as well as minimum required
190 security standards for operators, including for use in department and educational entity contracts
191 and agreements with operators, and shall approve the department's data privacy and security
192 policy and security plan for the state data system. The regulations further shall establish the
193 process through which the commissioner, pursuant to subsection (g) of section 34J, may bar an
194 operator from receiving student and educator evaluation data of any educational entity in this
195 commonwealth for a period of no less than five years. The regulations further shall provide that
196 curricula in student data privacy, security and confidentiality shall be a requirement for approved
197 educator preparation programs. In carrying out these responsibilities, the board shall consult with
198 the executive office of technology services and security and seek the input of security and
199 cybersecurity experts, including those from fields in addition to education that have experience
200 with personal data protection.

201 (b) The commissioner shall appoint a chief privacy officer with experience in data
202 privacy and security. The chief privacy officer shall oversee the development and

203 implementation, subject to the board's approval, of a department data privacy and security policy
204 and a detailed security plan for the state data system in consultation with the executive office of
205 technology services and security. The chief privacy officer further shall develop a model school
206 district data privacy and security policy as well as a model operator contract or contracts in
207 consultation with the executive office of technology services and security; otherwise support and
208 supervise implementation of sections 34I through 34L, inclusive, of this chapter and the
209 regulations issued by the board pursuant to subsection (a); develop and provide a program of
210 training, technical assistance and resource materials to K-12 schools, school districts and other
211 educational entities including through the issuance of guidance and recommendations to assist
212 with compliance with federal and state law pertaining to personally identifiable information
213 including, but not limited to, 20 U.S.C. 1232g, sections 34A through 34L, inclusive, of chapter
214 71 of the General Laws, chapter 66A of the General Laws and chapter 444 of the acts of 2018;
215 develop and oversee a program of oversight, support and accountability for the department and
216 educational entities responsible for implementing policies pursuant to sections 34I through 34L
217 of this chapter; and assist the commissioner with enforcement responsibilities regarding
218 operators that violate any provision of sections 34I through 34K, inclusive, of this chapter.

219 (c) The department shall make publicly available a list of categories of covered
220 information collected by the department including, but not limited to, covered information
221 required to be collected or reported by state or federal law. The list shall contain the source of the
222 information, the reason for the collection of the information and the use of the information
223 collected.

224 (d) In accordance with the regulations of the board promulgated pursuant to subsection
225 (a), each district shall develop a detailed privacy and security policy for the protection of covered

226 information that includes security breach planning, notice and procedures; provided, however,
227 that said policy shall include a requirement that the district report all significant data breaches of
228 student data either by the district or an operator to the commissioner within ten business days of
229 the initial discovery of the significant data breach; and provided, further, that a district may adopt
230 any model policy developed by the chief privacy officer of the department and approved by the
231 board to comply with this requirement. Each district shall designate an individual to act as a
232 student data manager to oversee said policy.

233 (e) Each district shall make publicly available on its website a list of categories of student
234 personally identifiable information collected at the school district, school or classroom level. The
235 list shall contain the source of the information, the reason for collection of the information and
236 the use of the information. Each district further shall make publicly available on its website a list
237 of the operators with which the district has a contract or agreement that involves the creation,
238 provision or gathering of covered information and a list of operators with which the district had a
239 contract or agreement that involved the creation, provision or gathering of covered information
240 in the last ten years.

241 (f) Each district annually shall provide annual training regarding the confidentiality of
242 student data to any employee with access to covered information; provided that, completion of
243 said training shall be a condition of a provisional or standard educator certification as defined in
244 section 38G.