

115TH CONGRESS
1ST SESSION

S. 877

To amend the Family Educational Rights and Privacy Act of 1974 to ensure that student data handled by private companies is protected, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 4), 2017

Mr. MARKEY (for himself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Family Educational Rights and Privacy Act of 1974 to ensure that student data handled by private companies is protected, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Student
5 Privacy Act of 2017”.

6 **SEC. 2. FERPA IMPROVEMENTS.**

7 Subsection (b) of section 444 of the General Edu-
8 cation Provisions Act (20 U.S.C. 1232g) (commonly re-

ferred to as the “Family Educational Rights and Privacy Act of 1974”) is amended—

(1) by redesignating paragraphs (4) through (7) as paragraphs (8) through (11), respectively;

(2) by inserting after paragraph (3) the following:

“(4)(A) No funds shall be made available under any applicable program to any educational agency or institution that has not implemented information security policies and procedures that—

“(i) protect personally identifiable information from education records maintained by the educational agency or institution; and

“(ii) require each outside party to whom personally identifiable information from education records is disclosed to have information security policies and procedures that include a comprehensive security program designed to protect the personally identifiable information from education records.

“(B) For purposes of this subsection, the term ‘outside party’ means a person that is not an employee, officer, or volunteer of the educational agency or institution or of a Federal, State, or local governmental agency and includes any contractor or consultant acting as a school

1 official or authorized representative or in any other capac-
2 ity.

3 “(5) Notwithstanding any other provision of this sec-
4 tion or paragraph (2)(A), no funds shall be made available
5 under any applicable program to any educational agency
6 or institution that has a policy or practice of using, know-
7 ingly releasing, or otherwise knowingly providing access to
8 personally identifiable information, as described in para-
9 graph (2), in the education records of a student to adver-
10 tise or market a product or service.

11 “(6) Each State educational agency receiving funds
12 under an applicable program, and each educational agency
13 or institution, shall ensure that any outside party with ac-
14 cess to education records with personally identifiable infor-
15 mation complies with the following:

16 “(A) Any education records that are held by the
17 outside party shall be held in a manner that pro-
18 vides, as directed by the educational agency or insti-
19 tution, parents with—

20 “(i) the right to access the personally iden-
21 tifiable information held about their students by
22 the outside party, to the same extent and in the
23 same manner as provided in subsection (a)(1);
24 and

1 “(ii) a process to challenge, correct, or de-
2 lete any inaccurate, misleading, or otherwise in-
3 appropriate data in any education records of
4 such student that are held by the outside party,
5 through an opportunity for a hearing by the
6 agency or institution providing the outside
7 party with access, in accordance with subsection
8 (a)(2).

9 “(B) The outside party shall maintain a record
10 of all individuals, agencies, or organizations that
11 have requested or obtained access to the education
12 records of a student held by the outside party, in the
13 same manner as is required under paragraph (8).

14 “(C) The outside party shall have policies or
15 procedures in place regarding information security
16 practices regarding the education records, in accord-
17 ance with paragraph (4).

18 “(7) No funds under any applicable program shall be
19 made available to any educational agency or institution,
20 or any State educational agency, unless the agency or in-
21 stitution has a policy or practice that—

22 “(A) promotes data minimization in order to
23 safeguard individual privacy by meeting any request
24 for student information with non-personally identifi-
25 able information, if the purpose of any appropriate

1 request can be effectively met with non-personally
2 identifiable information; and

3 “(B) requires that all personally identifiable in-
4 formation on an individual student held by any out-
5 side party be destroyed when the information is no
6 longer needed for the specified purpose.”; and

7 (3) in paragraph (8)(A), as redesignated by
8 paragraph (1)—

9 (A) by inserting “who are employees, offi-
10 cers, or volunteers of the agency or institution”
11 after “of this subsection”;

12 (B) by striking “or organizations” and in-
13 serting “organizations, or outside parties”;

14 (C) by striking “or organization” and in-
15 serting “organization, or outside party”; and

16 (D) by inserting “and will describe the in-
17 formation shared with such person, outside
18 party, agency, or organization” after “obtaining
19 this information”.

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