

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 568
 Ways and Means

(Delegate Kaiser, *et al.*)
 Education, Health, and Environmental Affairs

Education - Student Data Governance

This bill requires the Maryland State Department of Education (MSDE), in consultation with the Department of Information Technology (DoIT) and the county boards of education, to develop and update best practices for county boards on data governance and professional development on data governance policies and procedures. MSDE must also develop strategies to coordinate and assist local data governance staff in the counties to implement the bill’s requirements. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$55,000 in FY 2019 and \$63,000 in FY 2020 for MSDE to hire contractual staff to implement the bill’s requirements, as discussed below. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	55,000	62,700	0	0	0
Net Effect	(\$55,000)	(\$62,700)	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local school board expenditures increase, potentially significantly, to the extent that local boards implement the data governance program specified by the bill. Local revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines “personally identifiable information” (PII) as information that, alone or in combination, makes it possible to identify an individual student with reasonable certainty.

MSDE, in consultation with DoIT and the county boards of education, must develop and update best practices for county boards to:

- manage and maintain data privacy and security practices in the processing of student data and PII across the county board’s information technology and records management systems;
- develop and implement (1) a data privacy and security incident response plan; (2) a breach notification plan; and (3) procedures and requirements for allowing access to student data and PII for a legitimate research purpose; and
- publish information annually on (1) types of student data and PII processed by the board, protocols for processing student data, and rationales for selecting processing protocols; (2) contracted services that involve sharing student data between a board and a school service contract provider; and (3) procedures and rationales for vetting and selecting Internet sites, services, and applications.

The bill authorizes a county board to designate an employee to manage and maintain a data governance program that meets the requirements of the bill.

Reporting Requirements

MSDE must report twice, by July 1 of 2019 and 2020, on the status of (1) development and implementation of best practices in the areas of data governance, transparency, and professional development; (2) levels of engagement by county boards; (3) barriers to engagement, if any, including fiscal, statutory, or workplace obstacles; and (4) any recommended statutory changes.

Current Law/Background: The Student Data Privacy Act of 2015 (Chapter 413) requires an operator of specified websites, online services, online applications, and mobile applications designed primarily for a preK-12 public school purpose operating in accordance with a contract to (1) protect covered information from unauthorized access, destruction, use, modification, or disclosure; (2) implement and maintain reasonable security procedures and practices to protect covered information; and (3) delete covered information upon request of the public school or local school system.

In addition, an operator may not knowingly (1) engage in targeted advertising based on the data collected through the website, online service, or application; (2) except in furtherance of a preK-12 school purpose, use information to make a profile about a student; (3) sell a student's information, except as provided; or (4) disclose covered information, except as detailed in the bill. Operators may use aggregated or de-identified information under certain circumstances.

At the federal level, the Family Educational Rights and Privacy Act (FERPA) and the Children's Online Privacy Protection Act (COPPA) govern the privacy of student data when educational institutions engage cloud service providers.

FERPA generally prohibits the disclosure by schools that receive federal education funding of PII from a student's education records, unless the educational institution has obtained signed and dated written consent from a parent or eligible student or one of FERPA's exceptions applies.

COPPA governs operators of websites and online services that are directed to children younger than age 13 and operators of general audience websites or online services that have actual knowledge that a user is younger than age 13. Notably, the Federal Trade Commission has clarified that if an educational institution contracts with a cloud service provider that uses the students' data for advertising or marketing purposes, then COPPA is triggered.

According to the Code of Maryland Regulations, individual student records maintained by teachers or other school personnel under certain provisions are to be confidential in nature, and access to these records may be granted only for the purpose of serving legitimate and recognized educational ends. Individual student records, with the exception of records that are designated as permanent and with other exceptions provided by law, must be destroyed when they are no longer able to serve legitimate and recognized educational ends.

Educational institutions are bound by FERPA to protect the privacy of student and family information. In addition, MSDE follows guidelines specified by DoIT's Information Security Policy.

State Expenditures: General fund expenditures increase by \$54,998 in fiscal 2019, which accounts for a 90-day start-up delay, and by \$62,744 in fiscal 2020 for MSDE to hire one contractual program specialist to develop best practices for student data security and professional development, and to develop and submit the required reports in 2019 and 2020. After fiscal 2020, it is assumed that MSDE can handle the annual data reporting and periodic updating of the best practices with existing resources.

Contractual Position	1
Salaries and Fringe Benefits	\$49,639
Operating Expenses	<u>5,359</u>
Total FY 2019 State Expenditures	\$54,998

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act. Fiscal 2020 expenditures reflect a full salary with annual increases, elimination of one-time expenses, employee turnover and ongoing operating expenses.

Local Expenditures: Although the bill does not *require* local school boards to implement any best practices developed by MSDE (in consultation with DoIT and local school boards), jurisdictions that choose to implement the recommendations may realize significant costs.

For example, Baltimore City advises that one new staff position is necessary to implement the bill, including approximately \$133,000 in salary costs in fiscal 2019 and about \$300,000 in initial contractual costs related to evaluating, reconfiguring, and enhancing systems that contain PII. Similarly, Prince George’s County anticipates contractual and software costs totaling about \$200,000 in fiscal 2019.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Information Technology; Baltimore City; Montgomery County; Prince George’s County; Maryland State Department of Education; Department of Legislative Services

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