



Written Testimony of

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Submitted to:
Education Committee
Michigan Senate

RE: Amendments to Substitute for SB 510, Student Online Personal Protection Act

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On behalf of the Software & Information Industry Association (SIIA) and our member high tech companies, I submit our views regarding the substitute bill for SB 510, the Student Online Personal Protection Act.

Technology and data are increasingly important to instruction, school operations and student success. SIIA and its member companies recognize the importance of safeguarding student privacy. In fact, a strong network of laws and business practices now does so. SIIA also helped to develop the Student Privacy Pledge, now signed by over 180 school service providers clarifying their commitments to the appropriate use of student data to meet legal responsibilities and community expectations.

SIIA appreciates the legislature's review of regulations regarding the use and security of sensitive student information and your willingness to work with education stakeholders and service providers. SIIA still has outstanding concerns though that Senate Bill 510 in its most recent form will have unintended consequences that create barriers to the appropriate use of technology and data by Michigan educators and students, institutions and families. SIIA calls on the Committee to amend the bill to address these concerns.

As background, SIIA is the principal trade association for the software and digital content industry, representing more than 700 high tech companies. Some 200 SIIA members work with schools in Michigan and nationwide to develop and deliver school software applications, digital instructional content, online learning services and related technologies. Many of these services involve the use of student information. They are helping to support teachers and instruction, improve student learning, carry out various administrative operations, and improve school productivity and educational performance.

Educational Benefits of Technology & Data

The use of student information in schools is nothing new. From class scheduling to teacher electronic gradebooks to adaptive learning software, our schools have a long history of effectively using student information, and of relying on technologies from school service providers.

Today, newer technologies like hosted (or 'cloud') computing and data analytics are enhancing school capacity, increasing teacher access, improving security, and improving functionality. The result of these

tools is the ability for school systems to better identify students at risk of failure, to better identify the lessons that best meet each student's unique needs, and to more efficiently carry out core school administration. These tools and techniques allow educators to manage more data in more cost effective and sophisticated ways to inform instruction and enhance school productivity

As such, technology and data systems are increasingly mission critical to supporting students, families and educators – providing operational efficiencies, informing practice, and helping address the unique learning needs of each student. Modernizing our educational system through technology is critical to delivering a world-class education to all Michigan students, and ensuring the international competitiveness of the state and the nation.

Student Privacy & Security Protections

Schools and service providers have a strong framework of policies and procedures in place to safeguard the privacy and security of student information. One way they do this is by limiting the use of student personal information to the intended educational purposes.

The federal Family Educational Rights and Privacy Act (FERPA) requires that:

- student personally identifiable information shared with service providers be limited to uses otherwise performed by the school's own employees,
- the provider and information be under direct control of the school, and
- the information can only be used for the intended educational purposes.

In addition, the federal Children's Online Privacy Protection Act (COPPA) requires consent for the collection of personal information from children under the age of 13 by operators of child-directed online services or websites operated for commercial purposes school may provide consent only where the collection is for school purposes. The school may not provide consent for use of children's personal information for commercial purposes, such as behavioral advertising. The operator must provide the school with full notice of its collection, use, and disclosure practices.

COPPA and FERPA require parental consent both:

- if the school wants to share personal student information for non-educational purposes; and
- if the operator wants to use or disclose the information for its own commercial purposes.

The Protection of Pupil Rights Amendment (PPRA) prohibits use of personal information collected from students for marketing and advertising purposes unrelated to the educational purpose for which it was collected.

Service providers are also bound by contract, privacy policies and their terms of service agreements, and they are subject to significant penalties for unauthorized disclosure of personal student information. And 185 companies have already signed the Student Privacy Pledge that took effect in January as an additional, legally enforceable set of a dozen commitments that complements this existing protection framework and clarifies the appropriate use of student data to meet legal responsibilities and community expectations.

There is also a market incentive for service providers: if they do not live up to their responsibilities, they will lose the confidence of their customers.

SB 510

Following is a partial list of outstanding SIIA concerns and suggested amendments aimed at ensuring SB 510 supports student privacy without inappropriately limiting student, educator and family technology and data use:

- **Parental Consent**: The bill clarifies the limitations of operator use of student covered information to school purposes as defined. However, there are an increasing number of cases where the student or their parents may want the expressly approve the use or disclosure of information for additional purposes. For example, they may want their child’s data available to a tutoring program or to a college mentoring or scholarship program. They may want to be able to highlight their child’s achievements for internships and volunteer opportunities, where showing more data can provide a better picture than a one time high stakes SAT score. The parent may want to be able to share their child’s record with affiliated programs or organizations through which they home school their child. SIIA calls for an amendment that allows for prominent notice of an additional use or disclosure where the family requests or otherwise affirmatively agrees.

SIIA calls for insertion of a new subsection (4) within section 5, and renumbering of subsequent subsections, reading: *“Nothing in subsection (3) or paragraphs (1)(a), (b), or (d) shall be construed to prohibit the use or disclosure of covered information with the affirmative consent of the student or their parent or guardian given in response to clear and conspicuous notice of the use or disclosure.”*

We appreciate the concern that parents could choose to approve commercial uses of this data, but we think this is well addressed by the consent requirement. This bill should take care not to restrict parent’s ability to make decisions about uses and disclosures that use student data. As currently written, the bill provides only provisions for a limited number of uses and disclosures only in the K-12 school setting, which cannot be controlled by the parent. Parental access to a downloaded file is not a sufficient solution when the goal is an interactive sharing or access to a student’s information with an affiliated organization of the parents’ choosing. States around the country have passed similar student privacy laws that have recognized the need to give parents or students the ability and right to make choices about the use of student information and to obtain the benefits of these choices. Arkansas, Georgia, Maine and Maryland have all adopted similar consent language to that proposed here.

- **Clarify Restrictions on Use of Covered Information Sec. 5(1)(d)(vi)**: The bill seeks to restrict an operator from using covered information for non-educational purposes, while permitting use for K-12 school purposes. The last sentence of Subsection 5(1)(d)(vi) states “This subparagraph does not prohibit the operator’s use of information for maintaining, developing, supporting, improving, or diagnosing the operator’s site, service, or application.” Nearly identical language is also found in most of the similar laws in other states, including California’s SOPIPA. There is one material difference, however. It is clear in the other laws what sections of the law this language relates to. California, for example, places this language in a separate subpart and references the subsection by number. In Michigan SB 510, referencing “this subparagraph” and placing this language within the subpart related to service providers, instead of identifying the subparagraph by number and placing this language in its own subpart under Subsection 5(1), creates ambiguity, which is not present in similar laws from other states. It is unclear what subparagraph it relates to in Michigan SB 510. It appears to relate to just 5(1)(d)(vi), but that does not make sense from the context. To

eliminate this ambiguity and to follow the approach of the other states, it is recommended that this language be inserted in a new subpart (e) under 5(1)(d) and refer specifically to paragraph 5(1) using the following text:

SIIA calls for the following language to be moved from 5(1)(d)(vi) to a new subpart (e) under Subsection 5(1) as follows: *“(e) Nothing in this paragraph 5(1) prohibits the operator’s use of information for maintaining, developing, supporting, improving, or diagnosing the operator’s site, service, or application.”*

This change will make clear that operators can use data to support their efforts to provide the highest quality line of school services for their users.

- **Subcontractors Sec. 5(1)(d)(vi):** The bill restricts the operator from disclosing student information with certain exceptions, which include disclosure to a service provider provided that party adheres to certain requirements. As defined in this bill however, a ‘service provider’ refers to an internet service provider and not the typical subcontractor an operator may utilize to deliver a contracted educational service. SIIA recommends that the language in this provision referring to ‘service providers’ be amended to read as ‘subcontractor’ in order to avoid confusion. Additionally, the bill strictly prohibits service providers (subcontractors) from further disclosing covered information. SIIA calls for the bill to be amended to allow an operator’s subcontractors to further disclose the information to an additional third-party as necessary to serve the educational purpose, provided they adhere to the same requirements and restrictions.

SIIA recommends updating references to ‘service provider’ in Sec. 5(1)(d)(vi) to be replaced with the term ‘*subcontractor*’ on lines 7, 8, 10, and 12.

SIIA calls for amending Sec. 5(1)(d)(vi) by inserting the following after “third party”: “, *unless the disclosure is expressly permitted by paragraphs (1)(a)-(e) and subsection (3)*” [as amended by these recommendations]

Thank you for your consideration of these views. I would be pleased to work with you further to ensure any legislation supports safeguarding of student data without creating barriers to important use of technology and data by educators, students and families. Please feel free to contact me at bdesetti@siaa.net or (202) 789-4448.

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