Education Technology and Consumer Privacy Laws

Does a 16-year-old California student have a right to delete all of their grades without the knowledge of the parent or public school? California’s new privacy law may do just that unless the California legislature and the Attorney General take action.

The passage of the 2018 California Consumer Privacy Act (CCPA) established one of the most stringent privacy regimes in the United States. As the federal government and states begin debate on their own privacy legislation, California will be addressing a number of issues that have emerged since the passage of CCPA in 2018. One issue to follow in California and elsewhere will be the impact of consumer privacy legislation on education technology.

Schools are using technology for things like digital textbooks, to personalize a student’s learning, track grades and attendance, and develop school bus schedules. A comprehensive slate of privacy laws regulates the information that technology companies may collect or maintain about students, and how they may use it. Starting with the Family Educational Rights and Privacy Act (FERPA) in 1974 and, more recently, laws directly regulating education technology companies providing services to schools, student privacy laws are either as strict or stricter than requirements set forth by CCPA. The chart below describes some of the provisions of California’s student privacy and consumer privacy frameworks.

### California Student Privacy Laws (FERPA, SOPIPA, AB 1584)
- Limits vendor’s use of education data.
- Bans vendors from selling education data.
- Gives parents and eligible students the right to access and amend education records.

### California’s Consumer Privacy Act (CCPA)
- Education information as defined by FERPA is personal information.
- Requires opt-in/opt-out consent for the sale of data.
- Gives consumers the right to access from and delete their data collected by a vendor.

It is unclear how a vendor servicing a contract to a school, state, or local government will need to comply with CCPA. The deletion rights under CCPA could cause major compliance confusion and should be clarified. Additionally, state requirements for school record retention and federal requirements for school control of education data disclosed to vendors may prove difficult to follow if CCPA remains as written. Please refer to SIIA’s letter to Becerra for a more complete legal analysis. Possible fixes to the California law could include:

- Amend the CCPA definition of service provider to include businesses providing services to schools and governmental entities.
- Clarify that a business need not breach school contracts or student privacy laws to comply with CCPA.
- Ensure that the definition of personal information does not extend the reach of CCPA into the classroom.

This document should not substitute for a service provider’s detailed review of the new laws and regulations, and should not be taken as formal legal guidance.