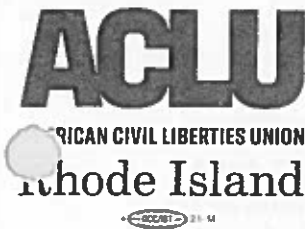


Attachment #14

ACLU Commentary (2/14/19)



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**COMMENTARY ON PROPOSED LEGISLATION BY THE RHODE ISLAND ONLINE DATA
TRANSPARENCY AND PRIVACY PROTECTION COMMISSION
FEBRUARY 14, 2019**

The ACLU appreciates the opportunity to provide commentary on the proposed package of legislation. We are glad to see that the conversation around protecting the privacy rights of Rhode Islanders has been extensive and considerate of the many concerns that privacy rights groups and activists have.

We have separately submitted written testimony from Timothy Edgar at Brown University on the package of bills being considered by the Commission. This commentary focuses on the proposed act which regards student data privacy protection. While we recognize the intent of this legislation, the ACLU is concerned that it may unintentionally undermine already enacted law, R.I.G.L. 16-104-1, which regulates student data-cloud computing, but which is not cited.

R.I.G.L. 16-104-1(b) defines "student data" as "any information in any media or format created or provided." Critically, it does not differentiate between deidentified and descriptive student data. As such, the presumption is that *all* data falls under the provisions of the law. The chapter further explicitly states that any person providing a cloud-computing service to an educational institution "shall not process [student] data for any commercial purposes, including, but not limited to, advertising purposes that benefit the cloud-computing service provider." However, the proposed legislation not only permits specific usage of "deidentified" student data, but in section (f) allows deidentified student data to be utilized "to demonstrate the effectiveness of the operator's products or services, including in their marketing."

In this circumstance, the proposed legislation is in conflict with 16-104-1 in two ways; it creates exemptions for "deidentified" student data, which the current law does not do, and it allows this "deidentified" data to be used for marketing purposes, which is currently expressly prohibited. We see further exceptions just a few lines down, when in section (e)(2) the proposed legislation notes that it does not "prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents, provided the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section."

We fail to understand how marketing could be targeted directly to parents without having used student data which provides identifying information on the parents of protected students. Even more concerning, however, "parental and family information" is not explicitly listed within the list of descriptive information which comprises covered

student information under section (a)(1)(iii). The ACLU would argue that identifying information of the parent is identifying information of the student. The absence of this crucial feature of identifying information could compromise both the protections in 16-104-1 and create scenarios where companies can circumvent the critical goal of not capitalizing on student information.

If the intention is to strengthen data privacy rights for students, we suggest creating stronger amendments to our existing law instead. For instance, the current law could be revised to do the following:

- Establish a set of reliable procedures if there is a data breach of student information
- Provide procedures for the deletion of student data
- Create limitations for the access that school employees have to student information
- Create substantive penalties for the misuse of student data

Overall, the ACLU is concerned that enacting this proposed piece of legislation could unintentionally undermine important provisions in existing law and the noble objective of protecting the privacy rights of students.

Thank you for your consideration.