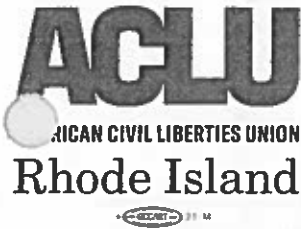


**Attachment #28**

ACLU, 5/29/19 letter and attachment





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**COMMENTARY ON THE "MODEL STUDENT ONLINE PERSONAL INFORMATION  
PROTECTION ACT"  
May 29, 2019**

The ACLU appreciates the opportunity to provide commentary on the package of legislation proposed by the Rhode Island Online Data Transparency and Privacy Protection Commission. We would like to reiterate our substantial concerns regarding the "Model Student Online Personal Information Protection Act" which we have been communicating to the commission since February. Although we are supportive of legislation which would increase data privacy protections for students, we have to emphasize that neither this legislation, nor the alternate pieces of legislation which this commission has considered, meet this goal.

We have summarized our concerns with this legislation below and continue to find that several aspects are problematic and counter to the goal of enhancing statutory student data privacy protections.

- The proposed legislation undermines current law, R.I.G.L. 16-104-1(b), which protects all student data from being used for advertising purposes.
  - Current statute does not differentiate between deidentified and descriptive student data, creating the presumption that all student data falls under the provisions of the law. However, the proposed legislation permits specific usage of "deidentified" student data.
  - Current statute also explicitly prohibits the use of any student data for advertising purposes, but the proposed legislation would allow for deidentified student data to be utilized "to demonstrate the effectiveness of the operator's products or services, including in their marketing" (section (3)(4)(b) on page 5).
- The proposed legislation does not "prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to the 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" (section (3)(5)(e)).
  - We fail to understand how marketing can be targeted directly to parents without having used student data providing identifying information on the parents of the students.
  - Even more concerning, "parental and family information" is not explicitly noted within the list of description information comprising covered student information under section (2)(a)(iii) in the proposed bill.
- This bill allows the use of "recommendation engines" by operators, which capture consumer data to provide relevant and individualized product recommendations (section (d), page 5).

- This opens the door for large companies to use student data to promote products across multiple industries.
- It invites scenarios such as Amazon working in the education space and using student data to “educationally” promote good food choices at Whole Foods, or an educational app which recommends additional study materials for a fee to students who consistently answer questions wrong.
- This specific proposed legislation has a history of being the tech industry’s response to campaigns calling for comprehensive improvement of statutory data privacy protections.
  - Because of its flagrant prioritization of industry over consumer needs, this “model” bill has been uniformly rejected by every state in which it has been introduced.

Should this commission be sincere in their efforts to introduce legislation which would increase these privacy protections, we once again note that substantive and important changes can be made to existing statute which would allow for deletion of student data, establish a set of reliable procedures for potential data breaches, and create penalties for the misuse of student data. These amendments, which we have also previously submitted to the commission for consideration, are drafted and attached to our testimony.

Thank you for your consideration.

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**TITLE 16**  
**Education**

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**Chapter 16-104**  
**Student Data-Cloud Computing**

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**Section 16-104-1**

14 § 16-104-1. Student data-cloud computing.

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16-104-2. Definitions.

17 (a) For the purposes of this chapter:

18 (1) "Cloud computing service" means a service that enables convenient on-demand network access  
19 to a shared pool of configurable computing resources to provide a student, teacher, or staff member  
20 account-based productivity applications such as email, document storage, and document editing  
21 that can be rapidly provisioned and released with minimal management effort or cloud computing  
22 service provider interaction.

23 (2) "Cloud computing service provider" means an entity other than a public elementary or  
24 secondary school that operates a cloud computing service.

25 (3) "Process" means to use, access, manipulate, scan, modify, transform, disclose, store, transmit,  
26 transfer, retain, aggregate, or dispose of student data.

27 (4) "Student data" means any information in any media or format created or provided:

28 (i) By a student; or

29 (ii) By a school board employee about a student in the course of using a cloud computing service,  
30 including the student's name, email address, postal address, email message, documents, unique  
31 identifiers, and metadata.

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16-104-3. Cloud Computing Services.

34 (a) Notwithstanding any general or special law to the contrary, any person who provides a cloud  
35 computing service to an educational institution operating within the state shall process data of a  
36 student enrolled in kindergarten through twelfth (12<sup>th</sup>) grade for the sole purpose of providing the  
37 cloud computing service to the educational institution and shall not process such data for any  
38 commercial purposes, including, but not limited to, advertising purposed that benefit the cloud  
39 computing service provider.

40 (b) The cloud computing service shall:

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2 (1) establish, implement, and maintain appropriate security measures, consistent with best  
3 current practices, to protect the student data that the cloud computing service sends, receives,  
4 stores, and transmits in conjunction with the service provided educational institutions in the state;  
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6 (2) establish and implement policies and procedures for responding to data breaches  
7 involving the unauthorized acquisition of or access to any student data collected by the cloud  
8 computing service. Such policies and procedures, at a minimum, shall:  
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10 (i) require notice be provided by the cloud computing service provider to any and all  
11 affected parties, including educational institutions and cloud computing service student users and  
12 their parents or legal guardians, within thirty (30) days of the discovery of the breach;  
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14 (ii) require the notice to include a description of the categories of student data that were, or  
15 were reasonably believed to have been, accessed or acquired by an unauthorized person; and  
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17 (iii) satisfy all other applicable breach notification standards established under state or  
18 federal law; and  
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20 (3) Permanently delete all student data collected by the cloud computing service within  
21 ninety (90) days of the termination of the student user's account, or upon request by the student  
22 user, the student user's parent or legal guardian, or the student user's educational institution.  
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24 16-104-4. Limitations on Use. Evidence or information obtained or collected in violation of this  
25 chapter shall be promptly deleted or destroyed and shall not be admissible in any civil or criminal  
26 trial or legal proceeding, disciplinary action, or administrative hearing, or used by an educational  
27 institution for any other purpose.  
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29 16-104-5. Penalties. In any civil action alleging a violation of this chapter, the court may award  
30 to a prevailing party declaratory and injunctive relief, damages, and reasonable attorneys' fees and  
31 costs.  
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