As Introduced

133rd General Assembly
Regular Session
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H. B. No. 333

Representative Cross
Cosponsors: Representatives Jones, Becker, Ghanbari, Baldridge, Wilkin, Blair

A BILL
To amend sections 3314.03, 3326.11, and 3328.24 and to enact section 3301.943 of the Revised Code to permit public schools to enter into agreements with third parties to provide digital student record storage, management, and retrieval.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3314.03, 3326.11, and 3328.24 be amended and section 3301.943 of the Revised Code be enacted to read as follows:

Sec. 3301.943. (A) As used in this section:

(1) "Student-generated content" means materials created by a student, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of student content. "Student-generated content" does not include student responses to a standardized assessment where student possession and control would jeopardize the validity and reliability of that assessment.

(2)(a) "Student records" means both of the following:
(i) Any information directly related to a student that is maintained by the school district board of education.

(ii) Any information acquired directly from the student through the use of instructional software or applications assigned to the student by a teacher or other district employee.

(b) "Student records" does not include information that cannot be used to identify an individual student, including aggregated information, but can be used by a third party for any of the following:

(i) To improve educational products, for adaptive learning purposes, and for customizing student learning;

(ii) To demonstrate the effectiveness of the operator's products in the marketing of those products;

(iii) For the development and improvement of educational sites, services, or applications.

(3) "Third party" refers to a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of student records.

(B) A school district board of education may enter into a contract with a third party for both of the following purposes:

(1) To provide services, including cloud-based services, for the digital storage, management, and retrieval of student records;

(2) To provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use student records in accordance with the contractual provisions prescribed by division (C) of.
section.

(C) A board that enters into a contract with a third party for purposes of division (B) of this section shall ensure the contract contains all of the following:

(1) A statement that student records continue to be the property of and under the control of the district board.

(2) Notwithstanding division (C)(1) of this section, a description of the means by which students may retain possession and control of their own student-generated content, if applicable, including options by which a student may transfer student-generated content to a personal account.

(3) A prohibition against the third party using any information in the student record for any purpose other than those required or specifically permitted by the contract.

(4) A description of the procedures by which a parent, guardian, or student, if the student is at least eighteen years old, may review personally identifiable information in the student's records and correct erroneous information.

(5) A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of student records. Compliance with this requirement shall not, in itself, absolve the third party of liability in the event of an unauthorized disclosure of student records.

(6) A description of the procedures for notifying the affected parent, guardian, or student, if the student is at least eighteen years old, in the event of an unauthorized disclosure of the student's records.
(7) A certification that a student's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced.

The requirements provided in division (C)(7) of this section shall not apply to student-generated content if the student chooses to establish or maintain an account with the third party for the purpose of storing that content pursuant to division (C)(2) of this section.


(9) A prohibition against the third party using personally identifiable information in student records to engage in targeted advertising.

(10) A prohibition against the state or a school district holding the third party harmless or indemnifying the third party in any manner that violates the debt limitations imposed on the state or a school district by the laws or constitution of this state. Any contract provision that conflicts with division (C)(10) of this section is void and unenforceable.

(D) In addition to any other penalties, a contract that fails to comply with the requirements of this section shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the contract. All parties subject to a contract voided under this division shall return all student records in
their possession to the district board.

(E) If the provisions of this section are in conflict with
the terms of a contract in effect before the effective date of
this section, the provisions of this section shall not apply to
the district board or the third party subject to that agreement
until the expiration, amendment, or renewal of the agreement.

(F) Nothing in this section shall be construed to impose
liability on a third party for content provided by any other
third party.

Sec. 3314.03. A copy of every contract entered into under
this section shall be filed with the superintendent of public
instruction. The department of education shall make available on
its web site a copy of every approved, executed contract filed
with the superintendent under this section.

(A) Each contract entered into between a sponsor and the
governing authority of a community school shall specify the
following:

(1) That the school shall be established as either of the
following:

(a) A nonprofit corporation established under Chapter
1702. of the Revised Code, if established prior to April 8,
2003;

(b) A public benefit corporation established under Chapter
1702. of the Revised Code, if established after April 8, 2003.

(2) The education program of the school, including the
school's mission, the characteristics of the students the school
is expected to attract, the ages and grades of students, and the
focus of the curriculum;
(3) The academic goals to be achieved and the method of measurement that will be used to determine progress toward those goals, which shall include the statewide achievement assessments;

(4) Performance standards, including but not limited to all applicable report card measures set forth in section 3302.03 or 3314.017 of the Revised Code, by which the success of the school will be evaluated by the sponsor;

(5) The admission standards of section 3314.06 of the Revised Code and, if applicable, section 3314.061 of the Revised Code;

(6)(a) Dismissal procedures;

(b) A requirement that the governing authority adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student without a legitimate excuse fails to participate in seventy-two consecutive hours of the learning opportunities offered to the student.

(7) The ways by which the school will achieve racial and ethnic balance reflective of the community it serves;

(8) Requirements for financial audits by the auditor of state. The contract shall require financial records of the school to be maintained in the same manner as are financial records of school districts, pursuant to rules of the auditor of state. Audits shall be conducted in accordance with section 117.10 of the Revised Code.

(9) An addendum to the contract outlining the facilities to be used that contains at least the following information:
(a) A detailed description of each facility used for instructional purposes;

(b) The annual costs associated with leasing each facility that are paid by or on behalf of the school;

(c) The annual mortgage principal and interest payments that are paid by the school;

(d) The name of the lender or landlord, identified as such, and the lender's or landlord's relationship to the operator, if any.

(10) Qualifications of teachers, including a requirement that the school's classroom teachers be licensed in accordance with sections 3319.22 to 3319.31 of the Revised Code, except that a community school may engage noncertificated persons to teach up to twelve hours per week pursuant to section 3319.301 of the Revised Code.

(11) That the school will comply with the following requirements:

(a) The school will provide learning opportunities to a minimum of twenty-five students for a minimum of nine hundred twenty hours per school year.

(b) The governing authority will purchase liability insurance, or otherwise provide for the potential liability of the school.

(c) The school will be nonsectarian in its programs, admission policies, employment practices, and all other operations, and will not be operated by a sectarian school or religious institution.

(d) The school will comply with sections 9.90, 9.91,
109.65, 121.22, 149.43, 2151.357, 2151.421, 2313.19, 3301.0710, 188
3301.0711, 3301.0712, 3301.0715, 3301.0729, 3301.943, 3301.948, 189
3313.472, 3313.50, 3313.536, 3313.539, 3313.5310, 3313.608, 190
3313.609, 3313.6012, 3313.6013, 3313.6014, 3313.6015, 3313.6020, 191
3313.643, 3313.648, 3313.6411, 3313.66, 3313.661, 3313.662, 192
3313.666, 3313.667, 3313.668, 3313.67, 3313.671, 3313.672, 193
3313.673, 3313.69, 3313.71, 3313.716, 3313.718, 3313.719, 194
3313.7112, 3313.721, 3313.80, 3313.814, 3313.816, 3313.817, 195
3313.86, 3313.89, 3313.96, 3319.073, 3319.074, 3319.321, 196
3319.39, 3319.391, 3319.41, 3319.46, 3321.01, 3321.041, 3321.13, 197
3321.14, 3321.141, 3321.17, 3321.18, 3321.19, 3321.191, 3327.10, 198
4111.17, 4113.52, and 5705.391 and Chapters 117., 1347., 2744., 199
3365., 3742., 4112., 4123., 4141., and 4167. of the Revised Code
as if it were a school district and will comply with section
3301.0714 of the Revised Code in the manner specified in section
3314.17 of the Revised Code.

(e) The school shall comply with Chapter 102. and section
2921.42 of the Revised Code.

(f) The school will comply with sections 3313.61,
3313.611, and 3313.614 of the Revised Code, except that for
students who enter ninth grade for the first time before July 1,
2010, the requirement in sections 3313.61 and 3313.611 of the
Revised Code that a person must successfully complete the
curriculum in any high school prior to receiving a high school
diploma may be met by completing the curriculum adopted by the
governing authority of the community school rather than the
curriculum specified in Title XXXIII of the Revised Code or any
rules of the state board of education. Beginning with students
who enter ninth grade for the first time on or after July 1,
2010, the requirement in sections 3313.61 and 3313.611 of the
Revised Code that a person must successfully complete the
curriculum of a high school prior to receiving a high school
diploma shall be met by completing the requirements prescribed
in division (C) of section 3313.603 of the Revised Code, unless
the person qualifies under division (D) or (F) of that section.
Each school shall comply with the plan for awarding high school
credit based on demonstration of subject area competency, and
beginning with the 2017-2018 school year, with the updated plan
that permits students enrolled in seventh and eighth grade to
meet curriculum requirements based on subject area competency
adopted by the state board of education under divisions (J)(1)
and (2) of section 3313.603 of the Revised Code. Beginning with
the 2018-2019 school year, the school shall comply with the
framework for granting units of high school credit to students
who demonstrate subject area competency through work-based
learning experiences, internships, or cooperative education
developed by the department under division (J)(3) of section
3313.603 of the Revised Code.

(g) The school governing authority will submit within four
months after the end of each school year a report of its
activities and progress in meeting the goals and standards of
divisions (A)(3) and (4) of this section and its financial
status to the sponsor and the parents of all students enrolled
in the school.

(h) The school, unless it is an internet- or computer-
based community school, will comply with section 3313.801 of the
Revised Code as if it were a school district.

(i) If the school is the recipient of moneys from a grant
awarded under the federal race to the top program, Division (A),
Title XIV, Sections 14005 and 14006 of the "American Recovery
the school will pay teachers based upon performance in accordance with section 3317.141 and will comply with section 3319.111 of the Revised Code as if it were a school district.

(j) If the school operates a preschool program that is licensed by the department of education under sections 3301.52 to 3301.59 of the Revised Code, the school shall comply with sections 3301.50 to 3301.59 of the Revised Code and the minimum standards for preschool programs prescribed in rules adopted by the state board under section 3301.53 of the Revised Code.

(k) The school will comply with sections 3313.6021 and 3313.6023 of the Revised Code as if it were a school district unless it is either of the following:

(i) An internet- or computer-based community school;

(ii) A community school in which a majority of the enrolled students are children with disabilities as described in division (A)(4)(b) of section 3314.35 of the Revised Code.

(12) Arrangements for providing health and other benefits to employees;

(13) The length of the contract, which shall begin at the beginning of an academic year. No contract shall exceed five years unless such contract has been renewed pursuant to division (E) of this section.

(14) The governing authority of the school, which shall be responsible for carrying out the provisions of the contract;

(15) A financial plan detailing an estimated school budget for each year of the period of the contract and specifying the total estimated per pupil expenditure amount for each such year.

(16) Requirements and procedures regarding the disposition
of employees of the school in the event the contract is
terminated or not renewed pursuant to section 3314.07 of the
Revised Code;

(17) Whether the school is to be created by converting all
or part of an existing public school or educational service
center building or is to be a new start-up school, and if it is
a converted public school or service center building,
specification of any duties or responsibilities of an employer
that the board of education or service center governing board
that operated the school or building before conversion is
delegating to the governing authority of the community school
with respect to all or any specified group of employees provided
the delegation is not prohibited by a collective bargaining
agreement applicable to such employees;

(18) Provisions establishing procedures for resolving
disputes or differences of opinion between the sponsor and the
governing authority of the community school;

(19) A provision requiring the governing authority to
adopt a policy regarding the admission of students who reside
outside the district in which the school is located. That policy
shall comply with the admissions procedures specified in
sections 3314.06 and 3314.061 of the Revised Code and, at the
sole discretion of the authority, shall do one of the following:

(a) Prohibit the enrollment of students who reside outside
the district in which the school is located;

(b) Permit the enrollment of students who reside in
districts adjacent to the district in which the school is
located;

(c) Permit the enrollment of students who reside in any
other district in the state.

(20) A provision recognizing the authority of the department of education to take over the sponsorship of the school in accordance with the provisions of division (C) of section 3314.015 of the Revised Code;

(21) A provision recognizing the sponsor's authority to assume the operation of a school under the conditions specified in division (B) of section 3314.073 of the Revised Code;

(22) A provision recognizing both of the following:

(a) The authority of public health and safety officials to inspect the facilities of the school and to order the facilities closed if those officials find that the facilities are not in compliance with health and safety laws and regulations;

(b) The authority of the department of education as the community school oversight body to suspend the operation of the school under section 3314.072 of the Revised Code if the department has evidence of conditions or violations of law at the school that pose an imminent danger to the health and safety of the school's students and employees and the sponsor refuses to take such action.

(23) A description of the learning opportunities that will be offered to students including both classroom-based and non-classroom-based learning opportunities that is in compliance with criteria for student participation established by the department under division (H)(2) of section 3314.08 of the Revised Code;

(24) The school will comply with sections 3302.04 and 3302.041 of the Revised Code, except that any action required to be taken by a school district pursuant to those sections shall
be taken by the sponsor of the school. However, the sponsor shall not be required to take any action described in division (F) of section 3302.04 of the Revised Code.

(25) Beginning in the 2006-2007 school year, the school will open for operation not later than the thirtieth day of September each school year, unless the mission of the school as specified under division (A)(2) of this section is solely to serve dropouts. In its initial year of operation, if the school fails to open by the thirtieth day of September, or within one year after the adoption of the contract pursuant to division (D) of section 3314.02 of the Revised Code if the mission of the school is solely to serve dropouts, the contract shall be void.

(26) Whether the school's governing authority is planning to seek designation for the school as a STEM school equivalent under section 3326.032 of the Revised Code;

(27) That the school's attendance and participation policies will be available for public inspection;

(28) That the school's attendance and participation records shall be made available to the department of education, auditor of state, and school's sponsor to the extent permitted under and in accordance with the "Family Educational Rights and Privacy Act of 1974," 88 Stat. 571, 20 U.S.C. 1232g, as amended, and any regulations promulgated under that act, and section 3319.321 of the Revised Code;

(29) If a school operates using the blended learning model, as defined in section 3301.079 of the Revised Code, all of the following information:

(a) An indication of what blended learning model or models will be used;
(b) A description of how student instructional needs will be determined and documented;

(c) The method to be used for determining competency, granting credit, and promoting students to a higher grade level;

(d) The school's attendance requirements, including how the school will document participation in learning opportunities;

(e) A statement describing how student progress will be monitored;

(f) A statement describing how private student data will be protected;

(g) A description of the professional development activities that will be offered to teachers.

(30) A provision requiring that all moneys the school's operator loans to the school, including facilities loans or cash flow assistance, must be accounted for, documented, and bear interest at a fair market rate;

(31) A provision requiring that, if the governing authority contracts with an attorney, accountant, or entity specializing in audits, the attorney, accountant, or entity shall be independent from the operator with which the school has contracted.

(32) A provision requiring the governing authority to adopt an enrollment and attendance policy that requires a student's parent to notify the community school in which the student is enrolled when there is a change in the location of the parent's or student's primary residence.

(33) A provision requiring the governing authority to
adopt a student residence and address verification policy for students enrolling in or attending the school.

(B) The community school shall also submit to the sponsor a comprehensive plan for the school. The plan shall specify the following:

(1) The process by which the governing authority of the school will be selected in the future;

(2) The management and administration of the school;

(3) If the community school is a currently existing public school or educational service center building, alternative arrangements for current public school students who choose not to attend the converted school and for teachers who choose not to teach in the school or building after conversion;

(4) The instructional program and educational philosophy of the school;

(5) Internal financial controls.

When submitting the plan under this division, the school shall also submit copies of all policies and procedures regarding internal financial controls adopted by the governing authority of the school.

(C) A contract entered into under section 3314.02 of the Revised Code between a sponsor and the governing authority of a community school may provide for the community school governing authority to make payments to the sponsor, which is hereby authorized to receive such payments as set forth in the contract between the governing authority and the sponsor. The total amount of such payments for monitoring, oversight, and technical assistance of the school shall not exceed three per cent of the
total amount of payments for operating expenses that the school receives from the state.

(D) The contract shall specify the duties of the sponsor which shall be in accordance with the written agreement entered into with the department of education under division (B) of section 3314.015 of the Revised Code and shall include the following:

1. Monitor the community school's compliance with all laws applicable to the school and with the terms of the contract;

2. Monitor and evaluate the academic and fiscal performance and the organization and operation of the community school on at least an annual basis;

3. Report on an annual basis the results of the evaluation conducted under division (D)(2) of this section to the department of education and to the parents of students enrolled in the community school;

4. Provide technical assistance to the community school in complying with laws applicable to the school and terms of the contract;

5. Take steps to intervene in the school's operation to correct problems in the school's overall performance, declare the school to be on probationary status pursuant to section 3314.073 of the Revised Code, suspend the operation of the school pursuant to section 3314.072 of the Revised Code, or terminate the contract of the school pursuant to section 3314.07 of the Revised Code as determined necessary by the sponsor;

6. Have in place a plan of action to be undertaken in the event the community school experiences financial difficulties or
closes prior to the end of a school year.

(E) Upon the expiration of a contract entered into under this section, the sponsor of a community school may, with the approval of the governing authority of the school, renew that contract for a period of time determined by the sponsor, but not ending earlier than the end of any school year, if the sponsor finds that the school's compliance with applicable laws and terms of the contract and the school's progress in meeting the academic goals prescribed in the contract have been satisfactory. Any contract that is renewed under this division remains subject to the provisions of sections 3314.07, 3314.072, and 3314.073 of the Revised Code.

(F) If a community school fails to open for operation within one year after the contract entered into under this section is adopted pursuant to division (D) of section 3314.02 of the Revised Code or permanently closes prior to the expiration of the contract, the contract shall be void and the school shall not enter into a contract with any other sponsor. A school shall not be considered permanently closed because the operations of the school have been suspended pursuant to section 3314.072 of the Revised Code.

Sec. 3326.11. Each science, technology, engineering, and mathematics school established under this chapter and its governing body shall comply with sections 9.90, 9.91, 109.65, 121.22, 149.43, 2151.357, 2151.421, 2313.19, 2921.42, 2921.43, 3301.0714, 3301.0715, 3301.0729, 3301.943, 3301.948, 3313.14, 3313.15, 3313.16, 3313.18, 3313.201, 3313.26, 3313.472, 3313.48, 3313.481, 3313.482, 3313.50, 3313.536, 3313.539, 3313.5310, 3313.608, 3313.6012, 3313.6013, 3313.6014, 3313.6015, 3313.6020, 3313.6021, 3313.61, 3313.611, 3313.614, 3313.615, 3313.643,
Sec. 3328.24. A college-preparatory boarding school established under this chapter and its board of trustees shall comply with sections 102.02, 3301.0710, 3301.0711, 3301.0712, 3301.0714, 3301.0729, 3301.943, 3301.948, 3313.536, 3313.6013, 3313.6021, 3313.6411, 3313.7112, 3313.721, 3313.89, 3319.39, 3319.391, and 3319.46 and Chapter 3365. of the Revised Code as if the school were a school district and the school's board of trustees were a district board of education.

Section 2. That existing sections 3314.03, 3326.11, and 3328.24 of the Revised Code are hereby repealed.

Section 3. Section 3328.24 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 410 and Sub. S.B. 3 of the 131st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.