



**Wednesday, August 6, 2014, 10:00 a.m.
House Room D, General Assembly Building**

Review and Discussion of SB 599: Cloud Computing & Student Data

Delegate Tom Rust, chairman of JCOTS, called the meeting to order and welcomed new members Senator Jennifer Wexton, Delegate Terry Austin, Delegate Glenn Davis, and Delegate Dave LaRock. The members all introduced themselves.

The general purpose of the meeting was to consider SB 599 (Cosgrove), which was referred to JCOTS by the 2014 Session of the General Assembly. SB 599 would require that any cloud computing service provider that enters into a contract with a local school board only utilize student data, as defined in the bill, according to the terms of its contract. The bill specifically prohibits the provider from using the data for any secondary purpose that benefits the provider or a third party, such as online advertising, the creation or correction of individual profiles, or the sale of the data.

Presentation of SB 599

Delegate Rust welcomed Delegate David Yancey to the meeting. Delegate Yancey carried HB 1114 (2014), which is identical to SB 599 and which was continued in the House Committee on Science and Technology without a referral to JCOTS. Delegate Yancey provided an overview of the legislation. He noted that sweeping new technology has changed the way that we view and treat data, especially data concerning students. Other states have addressed the issue of access to student data legislatively. The key is to find the appropriate balance between free enterprise and protecting the privacy of minors.

Staff Overview of Relevant Laws and Related Action in Other States

JCOTS staff provided the Commission with background on cloud computing technology. Staff also noted that two federal laws—the federal Family Educational Rights and Privacy Act (FERPA) and the Children’s Online Privacy Act (COPPA)—are relevant because both address the permissible use of data. Also relevant is Article 5 (§ 22.1-287 et seq.) of Chapter 14 of Title 22.1 of the Code of Virginia, which largely mirrors FERPA. FERPA aims to protect student data and prohibits its release to third parties without parental consent. FERPA does not, however, prohibit a school from contracting with vendors to perform education-related functions and sharing data with such vendors. It is

also important to note that FERPA was initially enacted in 1974, when student records were contained in physical file cabinets, not computer servers. Over 100 bills related to student data and student privacy have been introduced in other states in the past two years; to date nine states have enacted legislation.

Joel R. Reidenberg, *Stanley D. and Nikki Waxberg Chair and Professor of Law and Founding Academic Director of the Center on Law and Information Policy, Fordham University*

Professor Reidenberg gave testimony via videoconference regarding the background and current state of information privacy law. With The Center on Law and Information Policy at Fordham University, Professor Reidenberg recently completed a study entitled “Privacy and Cloud Computing in Public Schools.” Professor Reidenberg drew his comments from the research he conducted for the study, and he testified to the landscape of student cloud services and outsourcing practices of school districts. His testimony provided examples of how student information is utilized in data analytics, classroom functions, guidance functions, and communication with parents. A copy of the report is available at <http://law.fordham.edu/center-on-law-and-information-policy/30198.htm>.

Professor Reidenberg highlighted the significance of FERPA as applied to contracts between school districts and vendors. In his view, “educational record” is too narrowly defined, allowing some information to escape federal protection. He remarked that schools may fail to keep adequate data regarding contracts with third parties and that data security is often poor. He also stated that it is essential that school districts have a data policy in place to protect the privacy of the records.

After Professor Redienberg completed his remarks, Delegate Davis asked if the legislation at hand was getting ahead of recent changes made to COPPA regulations and whether the legislation was necessary. Professor Reidenberg responded that the Federal Communications Commission (FCC) has recently sought to clarify regulations already in place, that COPPA does not necessarily contemplate issues such as use of metadata, and that COPPA does not apply to children over 13.

Ben Schrom, *Products Manager, Google Apps for Education*

Ron Barnes, *Director of State Legislative Affairs, Google*

Ben Schrom provided an overview of Google generally and of the Google Apps for Education suite of tools currently offered to school systems around the country free of charge.

Mr. Schrom stated that Google’s cloud-based tools for education and productivity have over 30 million users and that the products have experienced a 70 percent growth in recent years, the bulk of which has been in the area of K-12 education. Mr. Schrom also emphasized how other Google products such as YouTube and Chromebook can be integrated to improve the learning process. He stated that it is among Google’s goals to provide scalable tools that empower teachers, students, parents, and administrators.

Mr. Schrom stated Google's position that the data in question belongs to the student and that Google does not collect or use student data for advertising purposes. He specifically noted a policy announcement made by Google in April 2014 that no advertisement will be allowed in Apps for Education. Previously, the system administrator was allowed to choose whether or not to allow ads, but that option has been removed.

Senator John Miller asked Mr. Schrom if Google has ever collected student data. Mr. Schrom's response was that Google at one time did collect data on the "back end" but that such data was never used. He also stated that such data is no longer collected.

Senator Steve Martin asked Mr. Schrom what secondary purpose such data might be used for and whether the language in the bill caused him any concern as it relates to Google's current business practices. Mr. Schrom replied that because "secondary purpose" is a vague and undefined term, he could not answer the question. He also noted that in the bill's current form, it is unclear whether Google's use of data to improve its products for all users would constitute a prohibited secondary purpose.

Delegate Davis asked how difficult it might be if there were 50 different sets of regulations, dependent upon specific criteria unique to laws adopted in each state. Mr. Schrom remarked that deploying Google Apps for Education in that way would be extremely difficult and that the standardization of the product is what enables Google to scale the product and to provide it for free. Delegate Davis asked if the product was COPPA compliant. Mr. Schrom responded in the affirmative.

Ron Barnes joined Mr. Schrom at the podium. Senator John Watkins asked Mr. Barnes whether Google's contracts with schools set forth a framework regarding liability for data breaches and subsequent notifications to users. Mr. Barnes answered that Google does not enter into contracts with school districts but rather requires that school districts agree to standard "terms of service." Senator Watkins said he would like to follow up whether state law requires notice to user in the event of data breach unrelated to breach of financial information.

Senator Martin again asked how restrictions on secondary purpose would affect Google's service. Mr. Barnes, deferring to Mr. Schrom, stated that since "secondary purpose" is undefined, such limitations are unclear and could affect functions such as spell check and malware blocking.

Delegate Rust asked whether a school system could modify the terms of service agreement, in particular with regard to data breaches. Mr. Schrom responded that in some limited cases, such as those of an extremely large user base, such modifications have been made. He added that in general, however, school systems not comfortable with the terms of service could simply decide not to use the products.

Perspectives of Virginia Schools

Chesterfield County Public Schools

Shawn Smith, Assistant Director of Community Relations for Chesterfield County Public Schools, testified regarding ways in which Chesterfield County utilizes services provided by Google Apps for Education. Mr. Smith drew the Commission's attention to language in the proposed legislation that would prohibit using data to create or correct a household profile and remarked on instances where such language may have a negative impact on how Chesterfield County utilizes the services. Mr. Smith concluded his remarks by stating that Chesterfield County Public Schools takes FERPA very seriously. He stated that he did not know of any specific instance where the use of cloud computing services by Chesterfield County Public Schools has been problematic and that he would be interested to know if other schools had experienced actual problems.

Senator Watkins asked Mr. Smith if a specific individual with Chesterfield County Public Schools was responsible for overseeing student privacy. Mr. Smith responded that such responsibility fell to the school board attorney and the IT director. Delegate Rust then asked whether parents could opt out of their student's participation in cloud computing services, and Mr. Smith responded that the school system would work with the family in that situation to find a solution.

Chesapeake Public Schools

Angela Bezik with Williams Mullen spoke on behalf of Chesapeake Public Schools. She said that SB 599 aligns well with Chesapeake Public Schools' current practices. She stated that Chesapeake opted to not use Google Apps for Education and instead chose a provider with whom they have a signed contract with agreed-upon terms. Delegate Davis asked whether Chesapeake's concerns about cloud computing services were related to data collection, data mining, or data breach. Ms. Bezik responded that Chesapeake was trying to protect against breach, marketing, and information sharing.

Senator Watkins suggested that, in follow-up to this meeting, JCOTS staff contact Henrico County and Fairfax County Public Schools regarding their data and privacy technology policies.

Paige Kowalski, State Policy and Advocacy, Data Quality Campaign

Ms. Kowalski testified that the collection of data in the educational setting can have many beneficial purposes and can help answer questions. However, in collecting data, a school should aim to collect that which has value. If complete and outright privacy is the goal, then data should not be collected at all. However, absolute data privacy is neither feasible nor desirable today. Instead, schools should place privacy in the context of the value of data and should seek to be good stewards of that data.

Culture is one big issue regarding use of data. Parents want to trust that schools are doing their due diligence but parents often do not understand what is being done to keep their children's data safe. She emphasized that parents often do not know what is being

collected, nor is the value of data communicated to parents. Ms. Kowalski presented essential elements of proper data security and outlined the roll of the states in protecting the privacy of data.

Ms. Kowalski also commented that the current climate around student data has very little transparency, and it is unclear how parents and students benefit in surrendering their data. With regard to SB 599, she asked the Commission to consider how to incentivize both school districts and vendors to use student data correctly.

Mark Schneiderman, *Senior Director of Education Policy, Software & Information Industry Association (SIIA)*

Mr Schneiderman provided testimony regarding the educational benefits of technology and data as well as student privacy and security protections. Mr. Schneiderman emphasized the importance of policy that meets the needs of both current students and future users and expressed concern about SB 599. He said that SIIA agrees that safeguarding student privacy and security was important; however, he believes that current industry best practices already accomplish this without the need for legislation. He believes that SB 599 would actually inadvertently inhibit the provision of core educational functions. Like previous presenters, he said that the “secondary purpose” language of the bill was ambiguous and problematic.

At the close of the scheduled presentations, Delegate Rust invited the audience to provide public comment. None was received.

Delegate Rust suggested scheduling an additional JCOTS meeting regarding SB 599 to gather additional information and have more time for discussion of the issues by the members. He directed staff to contact the State Board of Education and the Secretary of Education regarding possible participation in the next meeting.

Senator Watkins remarked that the use of technology in schools is extremely important but so is the need to protect the privacy of children as the duty of the Commonwealth to its young citizens.

Delegate Davis asserted that COPPA legislation provides significant protections for students up to the age of 13 and recommended that the Commission consider recommending a bill that extends similar protections to students up to the age of 18 in the Commonwealth.

Other Business

In other business, Delegate Rust informed the members that Delegate Scott Lingamfelter has requested that JCOTS form an advisory committee regarding a review and inventory of specialized equipment at state institutions of higher education and examine the potential for increased efficiency by sharing of equipment by institutions and possibly leasing idle equipment to private entities. Delegate Rust indicated that he would authorize

the creation of such an advisory committee, co-chaired by Delelegate Lingamfelter and the Honorable Joe T. May.

There being no further business before JCOTS, the meeting was adjourned. A copy of all meeting materials and presentations is available on the JCOTS website.