

Section 5-8.1. Definitions; Required Contract Terms; Additional requirements; Policy Exceptions. — A. For the purpose of this policy the following definitions apply:

"Elementary and secondary school purposes" means purposes that (i) customarily take place at the direction of an elementary or secondary school, elementary or secondary school teacher, or school division; (ii) aid in the administration of school activities, including instruction in the classroom or at home; administrative activities; and collaboration between students, school personnel or parents; or (iii) are otherwise for the use and benefit of an elementary or secondary school.

"Machine-readable format" means a structured format that can automatically be read and processed by a computer such as comma-separated values (CSV), JavaScript Object Notation (JSON) or Extensible Markup Language (XML). "Machine-readable format" does not include portable document format (PDF).

"Personal profile" does not include account information that is collected and retained by a school service provider and remains under the control of a student, parent or elementary or secondary school.

"School-affiliated entity" means any private entity that provides support to the school division or a public elementary or secondary school. "School-affiliated entity" includes alumni associations, booster clubs, parent-teacher associations, parent-teacher-student associations, parent-teacher organizations, public education foundations, public education funds and scholarship organizations.

"School-issued device" means any technological hardware or devices that a school board, acting independently or pursuant to a contract with a school technology provider, provides to individual students for their personal use on school property, at home, or both. "School-issued device" includes any laptop, tablet, or other technological device.

"School service" means a website, mobile application or online service that (i) is designed and marketed primarily for use in elementary or secondary schools; (ii) is used (a) at the direction of teachers or other employees at elementary or secondary schools or (b) by any school-affiliated entity; and (iii) collects and maintains, uses or shares student personal information. "School service" does not include a website, mobile application or online service that is (a) used for the purposes of college and career readiness assessment or (b) designed and marketed for use by individuals or entities generally, even if it is also marketed for use in elementary or secondary schools.

"School service provider" means an entity that operates a school service pursuant to a contract with the school division.

"School technology provider" means an entity that provides, pursuant to a contract with a school board in the Commonwealth, any technological hardware or devices intended for student use as school-issued devices.

"Student personal information" means information collected through a school service that identifies a currently or formerly enrolled individual student or is linked to information that identifies a currently or formerly enrolled individual student.

"Targeted advertising" means advertising that is presented to a student and selected on the basis of information obtained or inferred over time from such student's online behavior, use of applications, or sharing of student personal information. "Targeted advertising" does not include advertising (i) that is presented to a student at an online location (a) on the basis of such student's online behavior, use of applications or sharing of student personal information during ~~his~~ the student's current visit to that online location or (b) in response to that student's request for information or feedback and (ii) for which a student's online activities or requests are not retained over time for the purpose of subsequent advertising.

B. The contract between a school service provider and the School Board ~~shall~~ requires the school service provider or school technology provider shall or, in the case of any school or the School Board providing any school-issued devices independently, the school or School Board shall:

~~to do the following:~~

1. provide clear and easy-to-understand information about the types of student personal information it collects through any school service or through providing any school-issued devices and how it maintains, uses or shares such student personal information;
2. maintain a policy for the privacy of student personal information for each school service or each school-issued device and provide prominent notice before making material changes to its policy for the privacy of student personal information for the relevant school service or school-issued devices;
3. maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality and integrity of student personal information and makes use of appropriate administrative, technological and physical safeguards;
4. facilitate access to and correction of student personal information by each student whose student personal information has been collected, maintained, used or shared by the school service provider or school technology provider, or by such student's parent, either directly or through the student's school or teacher;
5. collect, maintain, use and share student personal information only with the consent of the student or, if the student is less than 18 years of age, ~~his~~ the student's parent

or for the purposes authorized in the contract between the School Board and the school service provider or school technology provider;

6. when it collects student personal information directly from the student, to obtain the consent of the student or, if the student is less than 18 years of age, his the student's parent before using student personal information in a manner that is inconsistent with its policy for the privacy of student personal information for the relevant school service or school-issued device, and when it collects student personal information from an individual or entity other than the student, to obtain the consent of the school division before using student personal information in a manner that is inconsistent with its policy for the privacy of student personal information for the relevant school service or school-issued device;
7. require any successor entity or third party with whom it contracts to abide by its policy for the privacy of student personal information and comprehensive information security program before accessing student personal information; and
8. require that, upon the request of the school or School Board, ~~the school service provider will~~ to delete student personal information within a reasonable period of time after such request unless the student or, if the student is less than 18 years of age, his the student's parent consents to the maintenance of the student personal information by the school service provider~~;~~;
9. for any school-issued device that a student returns at the end of the school year or upon request of the school or school division and that shall subsequently be provided to another student, disposed of, donated, or otherwise transferred in ownership to any individual or entity other than the specific student to whom it was issued, delete any student personal information stored in the school-issued device within a reasonable time after such school-issued device is returned and prior to the subsequent provision of such school-issued device to any other student or other transfer in ownership of such school-issued device; and
10. require that, upon request, providing, either directly to the student or the student's parent or through the school, access to an electronic copy of such student's personal information in a manner consistent with the functionality of the school service or school-issued device. Contracts the School Board and school service providers or school technology providers may require that such electronic copy be in a machine-readable format.

C. The contract will also prohibit the school service provider or school technology provider, or, in the case of a school or the School Board providing any school-issued devices independently, the school or School Board, from knowingly:

1. using or sharing any student personal information for the purpose of targeted advertising to students;
2. using or sharing any student personal information to create a personal profile of a student other than for elementary and secondary school purposes authorized by the school division, with the consent of the student or, if the student is less than 18 years of age, ~~his~~ the student's parent, or as otherwise authorized in the contract between the school division and the school service provider or school technology provider; ~~or~~
3. selling student personal information except to the extent that such student personal information is sold to or acquired by a successor entity that purchases, merges with or otherwise acquires the school service provider or school technology provider; or
4. except as provided in Va. Code § 22.1-289.01(E)(4), using any school-issued device provided pursuant to any such contract, or granting the School Board or other entity with the ability to use any school-issued device, to access or monitor (i) location-tracking features; (ii) audio or visual receiving, transmitting, or recording features; or (iii) student interactions, unless such use (a) is limited to a noncommercial, educational, or instructional purpose, to the provision of technical support, or to exam proctoring by a school board employee or a third party pursuant to a contract with the school board and notice of such use is provided in advance or (b) is permitted under a judicial warrant or is necessary to comply with state or federal law.

D. Nothing in this policy shall be construed to prohibit school service providers or school technology providers or, in the case of any school or the School Board providing any school-issued devices independently, the School Board or school from the following:

1. using student personal information for purposes of adaptive learning, personalized learning or customized education;
2. using student personal information for maintaining, developing, supporting, improving or diagnosing ~~the~~ any school service;
3. providing recommendations for employment, school, educational or other learning purposes within a school service when such recommendation is not determined in whole or in part by payment or other consideration from a third party;
4. disclosing student personal information to (i) ensure legal or regulatory compliance, (ii) protect against liability or (iii) protect the security or integrity of its school service; or

5. disclosing student personal information pursuant to a contract with a service provider, provided that the school service provider, school technology provider, School Board, or school (i) contractually prohibits the service provider from using any student personal information for any purpose other than providing the contracted service to or on behalf of the school service provider, school technology provider, School Board, or school (ii) contractually prohibits the service provider from disclosing any student personal information provided by the school service provider, school technology provider, School Board, or school to any third party unless such disclosure is permitted by Va. Code § 22.1-289.01(B)(7) and (iii) requires the service provider to comply with the requirements set forth Va. Code § 22.1-289.01(B) and the prohibitions set forth in Va. Code § 22.1-289.01(C).
- E. Nothing in this policy shall be construed to:
 1. impose a duty upon a provider of an electronic store, gateway, marketplace, forum or means for purchasing or downloading software or applications to review or enforce compliance with this policy with regard to any school service provider whose school service is available for purchase or download on such electronic store, gateway, marketplace, forum or means;
 2. impose liability on an interactive computer service, as that term is defined in 47 U.S.C. § 230(f), for content provided by another individual; or
 3. prohibit any student from downloading, exporting, transferring, saving or maintaining his the student's personal information, data or documents; or
 4. Prohibit the School Board from requesting or prohibit any provider from granting the School Board access to or the ability to monitor school-issued devices to ensure compliance with a school code of conduct or otherwise limit the ability of the School Board to use software filters to monitor school-issued devices for certain safety threats, self-harm prevention, or other risk indicators.

(Adopted: October 13, 2016; Ordinance Number: 16/17-23; Effective Date: July 1, 2017; Ordinance 22/23-89, Revised/Effective: June 8, 2023)

Legal Authority – Virginia Code §22.1-289.01 (1950), as amended.