

115TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Family Educational Rights and Privacy Act of 1974 to ensure that student data handled by private companies is protected, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. MARKEY (for himself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Family Educational Rights and Privacy Act of 1974 to ensure that student data handled by private companies is protected, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Student  
5 Privacy Act of 2017”.

6 **SEC. 2. FERPA IMPROVEMENTS.**

7 Subsection (b) of section 444 of the General Edu-  
8 cation Provisions Act (20 U.S.C. 1232g) (commonly re-

1 ferred to as the “Family Educational Rights and Privacy  
2 Act of 1974”) is amended—

3 (1) by redesignating paragraphs (4) through  
4 (7) as paragraphs (8) through (11), respectively;

5 (2) by inserting after paragraph (3) the fol-  
6 lowing:

7 “(4)(A) No funds shall be made available under any  
8 applicable program to any educational agency or institu-  
9 tion that has not implemented information security poli-  
10 cies and procedures that—

11 “(i) protect personally identifiable information  
12 from education records maintained by the edu-  
13 cational agency or institution; and

14 “(ii) require each outside party to whom per-  
15 sonally identifiable information from education  
16 records is disclosed to have information security poli-  
17 cies and procedures that include a comprehensive se-  
18 curity program designed to protect the personally  
19 identifiable information from education records.

20 “(B) For purposes of this subsection, the term ‘out-  
21 side party’ means a person that is not an employee, offi-  
22 cer, or volunteer of the educational agency or institution  
23 or of a Federal, State, or local governmental agency and  
24 includes any contractor or consultant acting as a school

1 official or authorized representative or in any other capac-  
2 ity.

3 “(5) Notwithstanding any other provision of this sec-  
4 tion or paragraph (2)(A), no funds shall be made available  
5 under any applicable program to any educational agency  
6 or institution that has a policy or practice of using, know-  
7 ingly releasing, or otherwise knowingly providing access to  
8 personally identifiable information, as described in para-  
9 graph (2), in the education records of a student to adver-  
10 tise or market a product or service.

11 “(6) Each State educational agency receiving funds  
12 under an applicable program, and each educational agency  
13 or institution, shall ensure that any outside party with ac-  
14 cess to education records with personally identifiable infor-  
15 mation complies with the following:

16 “(A) Any education records that are held by the  
17 outside party shall be held in a manner that pro-  
18 vides, as directed by the educational agency or insti-  
19 tution, parents with—

20 “(i) the right to access the personally iden-  
21 tifiable information held about their students by  
22 the outside party, to the same extent and in the  
23 same manner as provided in subsection (a)(1);  
24 and

1           “(ii) a process to challenge, correct, or de-  
2           lete any inaccurate, misleading, or otherwise in-  
3           appropriate data in any education records of  
4           such student that are held by the outside party,  
5           through an opportunity for a hearing by the  
6           agency or institution providing the outside  
7           party with access, in accordance with subsection  
8           (a)(2).

9           “(B) The outside party shall maintain a record  
10          of all individuals, agencies, or organizations that  
11          have requested or obtained access to the education  
12          records of a student held by the outside party, in the  
13          same manner as is required under paragraph (8).

14          “(C) The outside party shall have policies or  
15          procedures in place regarding information security  
16          practices regarding the education records, in accord-  
17          ance with paragraph (4).

18          “(7) No funds under any applicable program shall be  
19          made available to any educational agency or institution,  
20          or any State educational agency, unless the agency or in-  
21          stitution has a policy or practice that—

22                 “(A) promotes data minimization in order to  
23                 safeguard individual privacy by meeting any request  
24                 for student information with non-personally identifi-  
25                 able information, if the purpose of any appropriate

1 request can be effectively met with non-personally  
2 identifiable information; and

3 “(B) requires that all personally identifiable in-  
4 formation on an individual student held by any out-  
5 side party be destroyed when the information is no  
6 longer needed for the specified purpose.”; and

7 (3) in paragraph (8)(A), as redesignated by  
8 paragraph (1)—

9 (A) by inserting “who are employees, offi-  
10 cers, or volunteers of the agency or institution”  
11 after “of this subsection”;

12 (B) by striking “or organizations” and in-  
13 serting “organizations, or outside parties”;

14 (C) by striking “or organization” and in-  
15 serting “organization, or outside party”; and

16 (D) by inserting “and will describe the in-  
17 formation shared with such person, outside  
18 party, agency, or organization” after “obtaining  
19 this information”.