

MOCK-UP

PROPOSED AMENDMENT 6918 TO
SENATE BILL NO. 463
SECOND REPRINT

PREPARED FOR SENATOR HARRIS
MAY 1, 2015

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 388 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 1.25 to 8.5, inclusive, of this act.
3 **Sec. 1.25.** *The Legislature hereby finds and declares that:*
4 1. *The educational records of a pupil, including, without limitation,*
5 *the personally identifiable information of the pupil, belong to the pupil*
6 *and his or her parent or legal guardian.*
7 2. *It is the public policy of this State to protect such records and*
8 *information.*
9 3. *The provisions of sections 1.5 to 8.5, inclusive, of this act are*
10 *intended to:*
11 (a) *Provide greater protection of such records and information;*
12 (b) *Limit and restrict the collection, transfer and maintenance of*
13 *such information;*
14 (c) *Provide greater control of such information to pupils and their*
15 *parents or guardians;*

1 (d) Provide notification to persons and governmental entities
2 regarding the types of personally identifiable information collected and
3 how such information is kept secure;

4 (e) Establish a process for the correction or deletion of any
5 personally identifiable information collected by a school service
6 provider;

7 (f) Prohibit a school service provider from using personally
8 identifiable information to target advertising to minors; and

9 (g) Ensure that teachers and other licensed educational personnel
10 understand how to use school services in a manner that protects
11 personally identifiable information concerning pupils.

12 **Sec. 1.5.** As used in sections 1.25 to 8.5, inclusive, of this act, unless
13 the context otherwise requires, the words and terms defined in sections 2
14 to 4.5, inclusive, of this act have the meanings ascribed to them in those
15 sections.

16 **Sec. 2.** “Personally identifiable information” has the meaning
17 ascribed to it in 34 C.F.R. § 99.3.

18 **Sec. 3. 1.** “School service” means an Internet website, online
19 service or mobile application that:

20 (a) Collects or maintains personally identifiable information
21 concerning a pupil;

22 (b) Is used primarily for educational purposes; and

23 (c) Is designed and marketed for use in public schools and is used at
24 the direction of teachers and other educational personnel.

25 2. The term does not include an Internet website, online service or
26 mobile application that is designed or marketed for use by a general
27 audience, even if the school service is also marketed to public schools.

28 **Sec. 4.** “School service provider” means a person that operates a
29 school service, to the extent the provider is operating in that capacity.

30 **Sec. 4.5.** “Targeted advertising” means presenting advertisements
31 to a pupil where the advertisement is selected based on information
32 obtained or inferred from the online behavior of a pupil, the use of
33 applications by a pupil or personally identifiable information concerning
34 a pupil. The term does not include advertising to a pupil at an online
35 location based upon the current visit to the location by the pupil or a
36 single search query without the collection and retention of the online
37 activities of a pupil over time.

38 **Sec. 5. 1.** Before the persons or governmental entities described
39 in subsection 3 begin using a school service, a school service provider
40 must provide a written disclosure to such persons or governmental
41 entities in language that is easy to understand, which includes, without
42 limitation:

43 (a) The types of personally identifiable information collected by the
44 school service provider and the manner in which such information is
45 used; and

1 (b) A description of the plan for the security of data concerning
2 pupils which has been established by the school service provider
3 pursuant to section 7 of this act.

4 2. Before a school service provider makes a material change to the
5 plan for the security of data concerning pupils established pursuant to
6 section 7 of this act, the school service provider must provide notice to
7 the persons or governmental entities set forth in subsection 3.

8 3. The disclosure or notice provided pursuant to subsection 1 or 2,
9 as applicable, must be provided to:

10 (a) The board of trustees of a school district, the governing body of a
11 charter school or the governing body of a university school for
12 profoundly gifted pupils, as applicable, that uses the school service of the
13 school service provider; and

14 (b) Any teacher who uses the school service.

15 4. A school service provider shall:

16 (a) Allow a pupil who is at least ~~H3~~ 16 years of age ~~and~~ or the
17 parent or legal guardian of any pupil to review personally identifiable
18 information concerning the pupil that is maintained by the school service
19 provider; and

20 (b) Establish a process, in accordance with any contract governing
21 the activities of a school service provider and which is consistent with the
22 provisions of sections 1.5 to 8.5, inclusive, of this act, for the correction
23 of such information upon the request of:

24 (1) A pupil who is at least ~~H3~~ 16 years of age or the parent or
25 legal guardian of any pupil; or

26 (2) The teacher of the pupil or the board of trustees of the school
27 district in which the school that the pupil attends is located, the
28 governing body of the charter school that the pupil attends or the
29 governing body of the university school for profoundly gifted pupils that
30 the pupil attends, as applicable.

31 **Sec. 6. 1.** Except as otherwise provided in ~~subsection~~
32 subsections 2, ~~H~~ and 5, a school service provider may collect, use, allow
33 access to or transfer personally identifiable information concerning a
34 pupil only:

35 (a) For purposes inherent to the use of a school service by a teacher
36 in a classroom or for the purposes authorized by the board of trustees of
37 the school district in which the school that the pupil attends is located,
38 the governing body of the charter school that the pupil attends or the
39 governing body of the university school for profoundly gifted pupils that
40 the pupil attends, as applicable, so long as it is authorized by federal and
41 state law;

42 (b) If required by federal or state law;

43 (c) In response to a subpoena issued by a court of competent
44 jurisdiction;

45 (d) To protect the safety of a user of the school service; or

1 (e) With the consent of any person required in a policy of the school
2 district, charter school or university school for profoundly gifted pupils,
3 as applicable, or, if none, with the consent of the pupil, if the pupil is at
4 least ~~13~~ 16 years of age, or the parent or legal guardian of ~~the~~ a pupil
5 if the ~~parent or legal guardian has requested to provide consent before~~
6 ~~any such action is taken or if the~~ pupil is less than ~~13~~ 16 years of age.

7 2. A school service provider may transfer personally identifiable
8 information concerning a pupil to a third-party service provider if the
9 school service provider provides notice to ~~the appropriate~~ any person
10 ~~described~~ designated in ~~paragraph (e) of subsection 1~~ a policy of the
11 school district, charter school or university school for profoundly gifted
12 pupils, as applicable, to receive such notice, or, if none, to the pupil, if
13 the pupil is at least 16 years of age, or the parent or legal guardian of a
14 pupil if the pupil is less than 16 years of age and:

15 (a) Contractually prohibits the third-party service provider from
16 using any such information for any purpose other than providing the
17 contracted school services to, or on behalf of, the school service
18 provider;

19 (b) Prohibits the third-party service provider from disclosing any
20 personally identifiable information concerning a pupil unless the
21 disclosure is authorized pursuant to subsection 1; and

22 (c) Requires the third-party service provider to comply with the
23 requirements of sections 1.5 to 8.5, inclusive, of this act.

24 3. A school service provider shall delete any personally identifiable
25 information concerning a pupil that is collected or maintained by the
26 school service provider and that is under the control of the school service
27 provider within a reasonable time not to exceed 30 days after receiving a
28 request from the board of trustees of the school district in which the
29 school that the pupil attends is located, the governing body of the charter
30 school that the pupil attends or the governing body of the university
31 school for profoundly gifted pupils that the pupil attends, as applicable.
32 The board of trustees or the governing body, as applicable, must have a
33 policy which allows a pupil who is at least 16 years of age, or the parent
34 or legal guardian of ~~the~~ any pupil to request that such information about
35 the pupil be deleted. The school service provider shall delete such
36 information upon the request of ~~the~~ a pupil who is at least 16 years of
37 age or the parent or legal guardian of ~~the~~ any pupil if no such policy
38 exists.

39 4. Any agreement entered into by a school service provider that
40 provides for the disclosure of personally identifiable information must
41 require that the person or governmental entity to whom the information
42 will be disclosed abide by the requirements imposed pursuant to this
43 section.

44 5. A school service provider shall not:

1 (a) Use personally identifiable information to engage in targeted
2 advertising.

3 (b) Except as otherwise provided in this paragraph, sell personally
4 identifiable information concerning a pupil. A school service provider
5 may ~~provide~~ transfer personally identifiable information concerning
6 pupils to an entity that purchases, merges with or otherwise acquires the
7 school service and the acquiring entity becomes subject to the
8 requirements of sections 1.5 to 8.5, inclusive, of this act ~~and~~ and any
9 contractual provisions between the school service provider and a school
10 district governing such information.

11 (c) Use personally identifiable information concerning a pupil to
12 create a profile of the pupil without the consent of the appropriate person
13 described in paragraph (e) of subsection 1. ~~For the purposes of this~~
14 ~~paragraph, "creating a profile" does not include collecting or retaining~~
15 ~~account registration records or information that remains under the~~
16 ~~control of the pupil if he or she is at least 13 years of age, the parent or~~
17 ~~legal guardian of any pupil, the teacher of the pupil or the board of~~
18 ~~trustees of the school district in which the school that the pupil attends is~~
19 ~~located, the governing body of the charter school that the pupil attends~~
20 ~~or the governing body of the university school for profoundly gifted~~
21 ~~pupils that the pupil attends, as applicable.~~

22 (d) Use personally identifiable information concerning a pupil in a
23 manner that is inconsistent with any contract governing the activities of
24 the school service provider for the school service in effect at the time the
25 information is collected or in a manner that violates any of the
26 provisions of sections 1.5 to 8.5, inclusive, of this act.

27 (e) Knowingly retain, without the consent of the appropriate person
28 described in paragraph (e) of subsection 1, personally identifiable
29 information concerning a pupil beyond the period authorized by the
30 contract governing the activities of the school service provider.

31 6. This section does not prohibit the use of personally identifiable
32 information concerning a pupil that is collected or maintained by a
33 school service provider for the purposes of:

34 (a) Adaptive learning or providing personalized or customized
35 education;

36 (b) Maintaining or improving the school service;

37 (c) Recommending additional content or services within a school
38 service;

39 (d) Responding to a request for information by a pupil;

40 (e) Soliciting feedback regarding a school service; ~~for~~

41 (f) Allowing a pupil ~~who is at least 13 years of age or the parent or~~
42 ~~legal guardian of any pupil~~ to download, transfer, or otherwise maintain
43 data concerning ~~for~~ the pupil.

44 7. A school service provider that violates the provisions of this
45 section is subject to a civil penalty in an amount not to exceed \$5,000 per

1 violation. The Attorney General may recover the penalty in a civil action
2 brought in the name of the State of Nevada in any court of competent
3 jurisdiction.

4 **Sec. 7. 1.** A school service provider shall establish and carry out a
5 detailed plan for the security of any data concerning pupils that is
6 collected or maintained by the school service provider. The plan must
7 include, without limitation:

8 (a) Procedures for protecting the security, privacy, confidentiality
9 and integrity of personally identifiable information concerning a pupil;
10 and

11 (b) Appropriate administrative, technological and physical
12 safeguards to ensure the security of data concerning pupils.

13 2. A school service provider shall ensure that any successor entity
14 understands that it is subject to the provisions of sections 1.5 to 8.5,
15 inclusive, of this act and agrees to abide by all privacy and security
16 commitments related to personally identifiable information concerning a
17 pupil collected and maintained by the school service provider before
18 allowing a successor entity to access such personally identifiable
19 information.

20 **Sec. 8. 1.** Each school district and the governing body of a
21 charter school or a university school for profoundly gifted pupils, as
22 applicable, shall annually provide professional development regarding
23 the use of school service providers and the security of data concerning
24 pupils.

25 2. Teachers and other licensed educational personnel employed by a
26 school district, charter school or university school for profoundly gifted
27 pupils shall complete the professional development provided pursuant to
28 subsection 1.

29 **Sec. 8.3.** A school service provider may use and disclose
30 information derived from personally identifiable information concerning
31 a pupil to demonstrate the effectiveness of the products or services of the
32 school service provider, including, without limitation, for use in
33 advertising or marketing regarding the school service so long as the
34 information is aggregated or is presented in a manner which does not
35 disclose the identity of the pupil about whom the information relates.

36 **Sec. 8.5.** A person or governmental entity may not waive or modify
37 any right, obligation or liability set forth in sections 1.5 to 8.5, inclusive,
38 of this act. Any condition, stipulation or provision in a contract which
39 seeks to do so or which in any way conflicts with the provisions of
40 sections 1.5 to 8.5, inclusive, of this act is against public policy and is
41 void and unenforceable.

42 **Sec. 9.** NRS 391.31297 is hereby amended to read as follows:

43 391.31297 1. A teacher may be suspended, dismissed or not
44 reemployed and an administrator may be demoted, suspended, dismissed
45 or not reemployed for the following reasons:

- 1 (a) Inefficiency;
- 2 (b) Immorality;
- 3 (c) Unprofessional conduct;
- 4 (d) Insubordination;
- 5 (e) Neglect of duty;
- 6 (f) Physical or mental incapacity;
- 7 (g) A justifiable decrease in the number of positions due to decreased
- 8 enrollment or district reorganization;
- 9 (h) Conviction of a felony or of a crime involving moral turpitude;
- 10 (i) Inadequate performance;
- 11 (j) Evident unfitness for service;
- 12 (k) Failure to comply with such reasonable requirements as a board
- 13 may prescribe;
- 14 (l) Failure to show normal improvement and evidence of professional
- 15 training and growth;
- 16 (m) Advocating overthrow of the Government of the United States or
- 17 of the State of Nevada by force, violence or other unlawful means, or the
- 18 advocating or teaching of communism with the intent to indoctrinate pupils
- 19 to subscribe to communistic philosophy;
- 20 (n) Any cause which constitutes grounds for the revocation of a
- 21 teacher's license;
- 22 (o) Willful neglect or failure to observe and carry out the requirements
- 23 of this title;
- 24 (p) Dishonesty;
- 25 (q) ~~Breaches in the security or confidentiality of the questions and~~
- 26 ~~answers of the examinations that are administered pursuant to NRS~~
- 27 ~~389.550 or 389.805 and the college and career readiness assessment~~
- 28 ~~administered pursuant to NRS 389.807.~~
- 29 ~~(r)~~ Intentional failure to observe and carry out the requirements of a
- 30 plan to ensure the security of examinations and assessments adopted
- 31 pursuant to NRS 389.616 or 389.620;
- 32 ~~(s)~~ (r) An intentional violation of NRS 388.5265 or 388.527;
- 33 ~~(t)~~ (s) Gross misconduct; or
- 34 ~~(u)~~ (t) An intentional failure to report a violation of NRS 388.135 if
- 35 the teacher or administrator witnessed the violation.
- 36 2. *If a teacher or administrator breaches the security or*
- 37 *confidentiality of the questions and answers of the examinations that are*
- 38 *administered pursuant to NRS 389.550 or 389.805 or the college and*
- 39 *career readiness assessment administered pursuant to NRS 389.807, the*
- 40 *board of trustees of a school district, governing body of a charter school*
- 41 *or governing body of a university school for profoundly gifted pupils, as*
- 42 *applicable, shall:*
- 43 (a) *Suspend, dismiss or fail to reemploy the teacher; or*
- 44 (b) *Demote, suspend, dismiss or fail to reemploy the administrator.*

1 **3.** In determining whether the professional performance of a licensed
2 employee is inadequate, consideration must be given to the regular and
3 special evaluation reports prepared in accordance with the policy of the
4 employing school district and to any written standards of performance
5 which may have been adopted by the board.

6 ~~3-4~~ **4.** As used in this section, “gross misconduct” includes any act or
7 omission that is in wanton, willful, reckless or deliberate disregard of the
8 interests of a school or school district or a pupil thereof.

9 **Sec. 10.** NRS 391.313 is hereby amended to read as follows:

10 391.313 1. Whenever an administrator charged with supervision of
11 a licensed employee believes it is necessary to admonish the employee for
12 a reason that the administrator believes may lead to demotion or dismissal
13 or may cause the employee not to be reemployed under the provisions of
14 NRS 391.31297, the administrator shall:

15 (a) Except as otherwise provided in subsection 3, bring the matter to
16 the attention of the employee involved, in writing, stating the reasons for
17 the admonition and that it may lead to the employee’s demotion, dismissal
18 or a refusal to reemploy him or her, and make a reasonable effort to assist
19 the employee to correct whatever appears to be the cause for the
20 employee’s potential demotion, dismissal or a potential recommendation
21 not to reemploy him or her; and

22 (b) Except as otherwise provided in NRS 391.314, allow reasonable
23 time for improvement, which must not exceed 3 months for the first
24 admonition.

25 ↪ The admonition must include a description of the deficiencies of the
26 teacher and the action that is necessary to correct those deficiencies.

27 2. An admonition issued to a licensed employee who, within the time
28 granted for improvement, has met the standards set for the employee by
29 the administrator who issued the admonition must be removed from the
30 records of the employee together with all notations and indications of its
31 having been issued. The admonition must be removed from the records of
32 the employee not later than 3 years after it is issued.

33 3. An administrator need not admonish an employee pursuant to
34 paragraph (a) of subsection 1 if his or her employment will be terminated
35 pursuant to NRS 391.3197.

36 4. A licensed employee is subject to immediate dismissal or a refusal
37 to reemploy according to the procedures provided in NRS 391.311 to
38 391.3197, inclusive, without the admonition required by this section, on
39 grounds contained in paragraphs (b), (f), (g), (h), (p) and ~~(t)~~ (s) of
40 subsection 1 of NRS 391.31297.

41 **Sec. 11.** NRS 391.3161 is hereby amended to read as follows:

42 391.3161 1. Each request for the appointment of a person to serve
43 as a hearing officer must be submitted to the Superintendent of Public
44 Instruction.

1 2. Within 10 days after receipt of such a request, the Superintendent
2 of Public Instruction shall request that the Hearings Division of the
3 Department of Administration appoint a hearing officer.

4 3. The State Board shall prescribe the procedures for exercising
5 challenges to a hearing officer, including, without limitation, the number
6 of challenges that may be exercised and the time limits in which the
7 challenges must be exercised.

8 4. A hearing officer shall conduct hearings in cases of demotion,
9 dismissal or a refusal to reemploy based on the grounds contained in
10 ~~subsection~~ *subsections 1 and 2* of NRS 391.31297.

11 5. This section does not preclude the employee and the superintendent
12 from mutually selecting an attorney who is a resident of this State, an
13 arbitrator provided by the American Arbitration Association or a
14 representative of an agency or organization that provides alternative
15 dispute resolution services to serve as a hearing officer to conduct a
16 particular hearing.

17 **Sec. 12.** The provisions of sections 1.5 to 8.5, inclusive, of this act:

18 1. Apply to any agreement entered into, extended or renewed on or
19 after July 1, 2015, and any provision of the agreement that is in conflict
20 with that section is void.

21 2. Apply on July 1, 2018, to any agreement entered into before July 1,
22 2015.

23 **Sec. 13.** The provisions of NRS 354.599 do not apply to any
24 additional expenses of a local government that are related to the provisions
25 of this act.

26 **Sec. 14.** This act becomes effective on July 1, 2015.

27

H