

Book	Policy Manual
Section	Special Update - S.B. 29 Corrections & Special Education Model - January 2025
Title	Special Update - S.B. 29 Corrections & Special Education Model - January 2025 - Ohio Legislature Adopts Fixes to S.B. 29 Requirements as Emergency Measure
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LEGAL ALERT

To: Neola Clients

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Re: Ohio Legislature Adopts Fixes to SB 29 Student Data Requirements as Emergency Measure

Date: January 2025

Back in June, SB 29 was adopted into law. The bill, which took effect October 24th, 2024, caused a great deal of confusion and headaches for public schools. The legislature received pressure to enact legislative fixes, which were adopted on December 9th, 2024 through House Bill 432. The bill was passed as an emergency measure and took effect immediately. While the changes do not completely relieve schools of SB 29 obligations, they do help reduce some burdens and clarify confusion.

State Board Licensure Change

One important change in HB 432 narrowed the State Board's authority to take action against an individual's license or license application for releasing or discussing certain information. SB 29 previously authorized the State Board of Education to reject a license application or suspend, revoke, or limit the license of an individual who uses or releases information that is deemed confidential under state or federal law concerning a student or a student's family members for any purpose other than student instruction. This language is similar to expectations that are already included in the State Board's Licensure Code of Professional Conduct for Ohio Educators. HB 432 specified that the State Board's authority is only triggered when an individual "purposely uses or intentionally releases" confidential information.

Updated Definitions that Provide Needed Clarification

The most significant changes in SB 29 came from the adoption of three (3) new statutes: R.C. Sections 3319.325, 3319.326, and 3319.327. This trio was focused on student privacy and placed new restrictions and expectations on district contracts with technology providers, as well as on how the technology providers may access and use student data.

Some of the definitions in SB 29 that applied to these three (3) statutes were problematic. For instance, the law incorporated a definition of "educational records" which did not quite align with definitions from the Family Educational Rights and Privacy Act ("FERPA") as well as the corresponding State law R.C. 3319.321. HB 432 modified the SB 29 definition to follow these older laws, which helped clear confusion.

The definition of "technology providers" previously adopted in SB 29 has been modified by HB 432 to exclude county boards of developmental disabilities, educational service centers, information technology centers, assessment providers, curriculum providers, and other city, exempted village, and local school districts, and joint

vocational schools, that enter into service contracts with a district to provide school-issued devices. While the same requirements incorporated in SB 29 still apply for the entities which fall under the revised definition of technology providers, the group is now much smaller since many districts rely heavily on ITCs in particular for technology services.

The term "school-issued device" was modified from "hardware, software, devices, and accounts that a school district, acting independently or with a technology provider, provides to an individual student for that student's dedicated personal use", to "hardware, software, devices, and accounts that a school district, acting independently or with a technology provider, provides to an individual student for dedicated student use." This change appears relatively minor.

Finally, the term "student" was narrowed to students who are currently enrolled in grades kindergarten through twelve (12). The definition no longer includes formerly enrolled students and applicants.

Changes to Access and Monitoring Restrictions for Student Activities on Devices

SB 29 included a new provision that restricted a district's ability to access or monitor student activities on school-issued devices and accounts. The law prohibited a district from monitoring or accessing the following:

1. location tracking features on school-issued devices;
2. audio/visual receiving, transmitting, or recording features on such devices; and
3. data about student interactions with a school-issued device including, but not limited to, keystrokes and web browsing for limited exceptions.

SB 29 provided six (6) major exceptions to the above and required districts to send both a general notice annually as well as a seventy-two (72) hour notice after one of the exceptions was triggered. Although much of the original law still remains, the exceptions have been modified in HB 432 in a beneficial way.

Districts that provide the annual general notice to parents of their enrolled students may still engage in access and monitoring activities as long as they are for a noncommercial educational purpose that involves instruction, technical support, or exam proctoring. Districts may also monitor or access student devices to comply with a judicial warrant. HB 432 added judicial subpoenas as well to this exception.

The other four (4) exceptions to access and monitor student devices remained the same. However, school districts are now only required to provide seventy-two (72) hour notice if they initiate responsive action after one of the following:

- Access or monitor student devices pursuant to a warrant or subpoena;
- Access or monitor a device that has been stolen;
- Access or monitor a device to prevent or respond to a threat to life or safety.

The law further declares that if the notice presents a threat to life or safety, no notice must be provided at all. Finally, language was added to require that a service contract between a district and an ITC, ESC, other district, or county DD which involves accessing or monitoring student devices include language about which entity will be responsible for sending required notices.

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Last Modified by Beth Harman on January 4, 2025