

FIRST PERSON: OUR STUDENTS DESERVE MORE PRIVACY PROTECTIONS; STATES CAN LEAD THE WAY

A new Minnesota law adds safeguards in contracts between districts and technology vendors, limits surveillance of students on school-issued devices



by Minnesota Rep. Sandra Feist
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Minnesota's newly passed Student Data Privacy Act was seven years in the making, designed before technology became ubiquitous in classrooms and surveillance software began tracking every keystroke students make on school-issued devices.

The bill was also written long before my own kids began to relentlessly pressure me to buy a paid subscription to in-class tools that increase screen time but not math skills.

By the time I was elected in 2020 and entered the Minnesota House of Representatives, though, these issues and experiences were top of mind as I eyed the legislative landscape to determine where I could make a difference.

I zeroed in on student data privacy because a) it matters, b) the pandemic heightened the urgency around the issue, and c) a bill could pass through a divided legislature in my home state as a rare area of bipartisan consensus.

The Student Data Privacy Act (HF 2353) was the second bill I introduced as a new representative. It would take until the very last days of this legislative term for it to pass and become law.

A MULTIPRONGED PLAN TO PROTECT STUDENT PRIVACY

To paraphrase a decades-old, landmark decision of the U.S. Supreme Court involving the First Amendment, constitutional rights do not “stop at the schoolhouse gate.” The objective of our new law is to protect young people's right to privacy.

Furthermore, the goal is to address

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what a growing body of data is showing us about the discriminatory and harmful impacts of school surveillance — in areas such as school discipline, the mental health of students, and LGBTQ rights.

Our new Student Data Privacy Act does the following:

- First, contracts between schools and external technology providers must include safeguards on how student data is accessed. Additionally, the data must be destroyed upon the conclusion of these contracts, and any data breaches must be disclosed by the technology provider.

- Second, schools must affirmatively provide parents with information about any contracts that give third-party vendors access to student data. Additionally, parents will be given direction on how to voice concerns and ask questions.

- Third, new limits have been placed on schools' surveillance of student activities via school-issued devices. Notably, the law incorporates numerous exceptions, including when surveillance is necessary to respond to an imminent threat to life or safety.

- Lastly, external technology providers are barred from using student data for a commercial purpose, including, but not limited to, marketing or advertising to a student or parent.

SEVEN YEARS OF FIGHTING STATUS QUO AND BUILDING COALITIONS

The path to passage was challenging.

The bill was originally brought forward almost seven years ago by the American Civil Liberties Union of Minnesota. In ensuing years, the bill was chiefly authored by Republican legislators.

The original version placed significant restrictions and burdens on the technology companies.

These companies negotiated amendments and occasionally tried to replace the entire language of the bill with an industry-approved version that would have protected student data in name only.

In addition to technology companies, schools weighed in with input on how the measure would impact their use of technology and create new obligations.

Parent groups periodically offered

support for the bill, but it remained in the legislative shadows for many terms, evolving over time to address continuing input by stakeholders.

At one point, the bill made it to the House floor but was amended off at the last minute in dramatic fashion.

I took on the role of chief author with agreement by the former Republican chief author. I was the first Democratic chief author of the bill since its inception, and introduced it in March 2021.

I worked closely with Republicans and my fellow members of the Democratic-Farmer-Labor (DFL) party in both the Minnesota House and Senate to gain interest and support.

This was a below-the-radar process involving countless conversations and meetings to make clear the high stakes and meaningful nature of this “wonky” data privacy bill.

Ultimately, the Student Data Privacy Act passed and became law in late May. It was the only enacted measure from our 2022 legislative session with a direct impact on K-12 students.

Our legislative success was due to a combination of bipartisan teamwork, community advocacy and thoughtful coalition-building. I was willing to deeply invest my political capital in the bill's passage, and that paid off.

AMONG THE LESSONS LEARNED: A 'TRUE CHAMPION' IS NEEDED

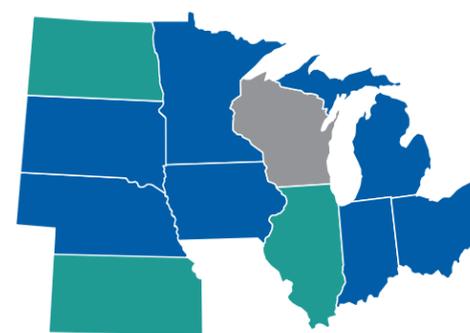
Based on my experience, here are some key takeaways for legislators in other states who may be looking to pass similar legislation:

- 1) There will be opponents, including individuals who may be allies and collaborators on other issues and bills. You need to stand firmly by your principles and goals. Get comfortable with the discomfort of this tension.

- 2) Finding the right institutional allies is critical. Build coalitions with stakeholders who have a powerful voice in your legislature.

- 3) Bipartisan collaboration is possible and necessary on the issue of student data privacy, and it has benefits that go beyond any specific bill. More opportunities for cross-party communication and productive negotiations are opened up.

STUDENT DATA PRIVACY LAWS IN MIDWESTERN STATES



- Law in place covering K-12 students
- Law in place covering K-12 and higher education students
- No laws found

Source: Student Privacy Compass

4) The chief author or sponsor needs to be a true champion who will “hustle” the bill. This kind of measure will not pass without that level of intensity because there is too much institutional inertia to keep the status quo.

As a legislator and as a mother, I am incredibly proud of Minnesota's new Student Data Privacy Act.

Based upon the communications I've had with my own children's school district, as well as with other districts and school technology professionals, I have already seen the meaningful step forward that this bill represents for our children's privacy and equity in educational access.

There are definitely further steps that we can take, and I look forward to seeing how other states tackle this issue.

My hope is that the states will be the incubator for myriad approaches and that Congress will then pass the gold standard for student data privacy — hopefully in the not-too-distant future.

Rep. Sandra Feist was elected to the House in 2020. She serves on the Education Finance and Policy committees, as well as two others: Judiciary Finance and Civil Law, and Public Safety and Criminal Justice Reform Finance and Policy.

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