



Acceptable Use Policies Must Include Protections for LGBTQ+ Material and Student Data Privacy

IDRA Testimony Against House Bill 338 submitted by Ruth Youn to the Georgia Senate Education and Youth Committee, March 21, 2023

Good afternoon, Chairman Dixon and Members of the Committee:

My name is Ruth M. Youn, I am an education policy fellow at IDRA, an independent, non-partisan, non-profit committed to achieving equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college.

We support the intentions of this bill to provide policies for filtering pornographic material from school-issued devices. However, we oppose House Bill 338 in its current form because the bill leaves certain diverse content susceptible to censorship, mandates unnecessary surveillance, and threatens student privacy protections.

HB 338 May Lead to Censoring of Appropriate LGBTQ+ Content and Assigns Decision-Making Authority for Legal Obscenity Standard to Non-Legal Experts

HB 338's definition of material that is "harmful to minors" leaves diverse websites and resources, especially those addressing LGBTQ+ topics, susceptible to being incorrectly censored. LGBTQ+ students may need to use school-issued devices for information about this aspect of their identity. For example, they may not have access to the Internet at home or may live in environments where they are at risk for physical or emotional harm if seen accessing such content.

In fact, in a nationwide study conducted in 2019, just over half of students with Internet access at school reported being able to access LGBTQ+ related resources using school computers (Kosciw, et al., 2020). Unfortunately, due to many school districts adopting similar "harmful to minor" standards within their acceptable use policies, non-sexual and non-pornographic websites that cover LGBTQ+ topics have been blocked (ACLU, 2012).

Additionally, HB 338 requires that computer software and non-experts analyze and block obscene materials. Conventionally, this kind of analysis, called the *Miller* test, is performed in a court of law by legal experts. However, HB 338 puts the responsibility of nuanced legal analysis and determination into the hands of non-legal experts, computer programs and local school board members (HB 338, Section 3, Sub. 1, Lines 121-122; *Miller v. California*, 1973). Without requiring training or explicitly stating that LGBTQ+ materials are not inherently obscene, HB 338 risks inappropriately censoring of these topics.

HB 338 Threatens Student Data Privacy by Going Beyond Filtering

Since 2007, schools have been required to use software programs designed to block access to obscene or harmful materials to minors. However, HB 338 redefines technology protection measures as “inspecting and analyzing encrypted and unencrypted Internet traffic” (HB 338, Section 3, Sub. 1, Lines 105-106). Rather than filtering, this is an active surveillance of student, staff and caregivers’ Internet traffic.

Additionally, this bill mandates the pursuit of personal information through data collection without parameters on what data will be collected and who will have access to them. This puts children’s privacy at risk and is a violation of federal law according to the Children’s Online Privacy Protection Rule (COPPR, Code of Federal Regulations, Title 16, Chapter 1, Subchapter C, Part 312).

HB 338 Lacks Vendor Accountability

HB 338 contains no standards or reporting requirements for vendors regarding the type of data elements to be collected, the agencies or persons who will have access to them, by what parameters they will be deemed as harmful, and no standards on how data are stored. Thus, in addition to risking violation of the federal Children’ Online Privacy Protection Rule, the bill may violate the Family Educational Rights and Privacy Act (FERPA) as well.

Georgia leaders have the responsibility to ensure that the privacy rights of students are protected. Mandating surveillance and omitting accountability measures for data collection and reporting is tantamount to spying – in this case, spying on children and on school employees and caregivers.

We urge the committee to oppose HB 338. The proposed Student Technology Protection Act does not protect students. Rather, it risks censoring legitimate resources on LGBTQ+ topics, violates student privacy, and allows vendors to collect information without transparency or accountability.

Recommendations

- Ensure that LGBTQ+ websites and materials are not inappropriately filtered or censored.
- Protect child privacy and prevent spying and surveillance by opposing HB 338.
- Steward public dollars responsibly. Avoid diverting spending on new technology, training, ongoing upgrades and the administrative cost of handling an increased number of appeals. Schools are already under-resourced due to lack of opportunity weight funding and a grossly outdated QBE formula.

IDRA is available for any questions or further resources that we can provide. For more information, please contact Ruth Youn at ruth.youn@idra.org.

Resources

ACLU. (2012). Don’t Filter Me Final Report. American Civil Liberties Union.

https://www.aclu.org/sites/default/files/field_document/dont_filter_me-2012-1001-v04.pdf

Barnett, M. (June-July 2017). Student Data Tracking, Taking a Closer Look at Privacy. IDRA Newsletter.

<https://www.idra.org/resource-center/student-data-tracking-taking-closer-look-privacy/>

Children’s Internet Protection Act (CIPA). <https://www.fcc.gov/consumers/guides/childrens-internet-protection-act>

Children’s Online Privacy Protection Rule (COPPR). Code of Federal Regulations, Title 16, Chapter I, Subchapter C, Part 312. <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-C/part-312>

Family Educational Rights Protection Act (FERPA). <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Gebhart, G. (April 13, 2017). Spying on Students: School-Issued Devices and Student Privacy. Electronic Frontier Foundation. <https://www.eff.org/wp/school-issued-devices-and-student-privacy>

Hudson, D.L. (2018). Miller Test. First Amendment Encyclopedia. <https://www.mtsu.edu/first-amendment/article/1585/miller-test>

Kosciw, J.G., Clark, C.M., Truong, N.L., & Zongrone, A.D. (2020). The 2019 National School Climate Survey – The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools. GLSEN. <https://www.glsen.org/research/2019-national-school-climate-survey>

Official Code of Georgia Annotated, §20-2-324. (2022). Internet Safety Policies for Schools.

Siegel, M. (June 1, 2022). How Anti-LGBTQ Web Filters Stand Between LGBTQ Youth and the Online Resources They Need. New America. <https://www.newamerica.org/oti/blog/how-anti-lgbtq-web-filters-stand-between-lgbtq-youth-and-the-online-resources-they-need/>

IDRA is an independent, non-profit organization led by Celina Moreno, J.D. Our mission is to achieve equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. IDRA strengthens and transforms public education by providing dynamic training; useful research, evaluation, and frameworks for action; timely policy analyses; and innovative materials and programs.