



Contracts for Digital Storage, Management, and Retrieval of Student Records

Encore may enter into a contract with a third party (1) to provide services, including cloud-based services, for the digital storage, management, and retrieval of student records, or (2) to provide digital educational software that authorizes a third-party provider of such software to access, store, and use student records in accordance with specified contractual provisions.

If Encore enters into such a contract with a third party, Encore shall ensure that the contract contains all of the following:

1. A statement that student records continue to be the property of and under the control of Encore.
2. Notwithstanding (1), a description of the means by which students may retain possession and control of their own student-generated content, including options by which a student may transfer student-generated content to a personal account.
3. A prohibition against the third party using any information in the student record for any purpose other than those required or specifically permitted by the contract.
4. A description of the procedures by which a parent, legal guardian, or “eligible student” may review personally identifiable information in the student’s records and correct erroneous information. An “eligible student” means a student who has reached 18 years of age.
5. A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of student records.
6. A description of the procedures for notifying the affected parent, legal guardian, or eligible student in the event of an unauthorized disclosure of the student’s records.
7. A certification that a student’s records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced. This requirement shall not apply to student-generated content if the student chooses to establish or maintain an account with the third party for the purpose of storing that content.
8. A description of how Encore and the third party will jointly ensure compliance with the Family Educational Rights and Privacy Act (“FERPA”).



9. A prohibition against the third party using personally identifiable information in student records to engage in targeted advertising.

Penalties

A contract that fails to comply with the above requirements shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the contract. All parties subject to a contract voided under this subdivision shall return all student records in their possession to Encore.

Definitions

For purposes of a contract, the following terms have the following meanings:

1. “Deidentified information” means information that cannot be used to identify an individual student.
2. “Eligible student” means a student who has reached 18 years of age.
3. “Student-generated content” means materials created by a student, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of student content. “Student-generated content” does not include student responses to a standardized assessment where student possession and control would jeopardize the validity and reliability of that assessment.
4. “Student records” means both of the following:
 - a. Any information directly related to a student that is maintained by Encore.
 - b. Any information acquired directly from the student through the use of instructional software or applications assigned to the student by a teacher or other local educational agency employee.
5. “Student records” does not mean any of the following:
 - a. Deidentified information, including aggregated deidentified information, used by the third party to improve educational products, for adaptive learning purposes, and for customizing student learning.
 - b. Deidentified information, including aggregated deidentified information, used to demonstrate the effectiveness of the operator’s products in the marketing of those products.



Deidentified information, including aggregated deidentified information, used for the development and improvement of educational sites, services, or applications.