



TO: P12 Education Committee
FROM: Elizabeth R. Berlin
SUBJECT: Information Privacy Program
DATE: March 28, 2018
AUTHORIZATION(S):

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SUMMARY

Issue for Discussion

1. Update on the process of drafting regulations to implement New York's data privacy law, New York State Education Law §2-d.
2. Update on data privacy and security activities and progress

Reason(s) for Consideration

For information and discussion purposes.

Related Regents Items

[October 2017 Regents Item](#)

(<https://www.regents.nysed.gov/common/regents/files/1017brd1.pdf>)

Background Information

New York State Education Law §2-d was enacted in 2014.¹ The law's focus is the privacy and security of students' personally identifiable information and teacher and principal annual professional performance review data (PII) and imposes requirements on educational agencies and the third-party contractors they utilize to provide services that have access to PII. The purpose of the regulations being drafted is to clarify the law's requirements to ensure that educational agencies and contractors clearly understand their

¹ Education Law §2-d(2)(d), which stated that the Chief Privacy Officer may hold more than one position within the State Education Department, was repealed by Chapter 56 of the Laws of 2015.

obligations, and to provide model policies and guidance documents to assist with compliance.

To assist the State Education Department (SED) in this work, the Data Privacy Advisory Council (DPAC) was established. The DPAC brings together experts, stakeholders, educators and parents to help with the work of drafting regulations and providing input to SED in the areas of information privacy in education. Please see Attachment A for a list of DPAC members.

1. Update on the Draft Regulations

SED's Chief Privacy Officer (CPO), in partnership with the DPAC, is currently working to draft a regulatory proposal for the Board's consideration that would implement Education Law §2-d's requirements around student data privacy. To date, the DPAC has focused its work on gathering information from the field of stakeholders and experts to begin drafting data security and privacy standards that will apply to every educational agency. The standards will serve as threshold (minimum) requirements that must be adopted for compliance but beyond which educational agencies may choose to go. The CPO's Data Privacy and Security Workgroup determined that the standards must have the following qualities:

- Credible
- Durable
- Enforceable
- Understandable
- Supportable

The Work Group is tentatively looking at the National Institute of Standards and Technology (NIST) 800-171, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations, as a possible model or standard. It was a standard proposed in discussions with the US Department of Education's Privacy Technical Assistance Center. The Work Group is considering the adoption of a NIST standard because it is known to meet the above noted qualities as described below:

- Credible - most other standards are derived from NIST standards.
- Durable - US Department of Commerce keeps the standard current.
- Enforceable - audit resources exist for NIST standards.
- Understandable - most widely adopted data privacy and security standard in the United States.
- Supportable - knowledge transfer to districts and vendors supported by federal resources and the private sector.

We have mapped the NIST standard to Education Law §2-d's requirements and have consulted with state security experts to validate our process and direction. As a next step, we plan to consult with private sector and industry experts.

Furthermore, in spring 2018, we will engage in a "listening tour" across the State to seek input from parents, education experts and other stakeholders, on additional elements of the parent's bill of rights, and on sections of the student data privacy law that should be addressed in regulations. We expect to have a regulatory proposal to discuss with the Board in fall 2018, with the goal of presenting regulations to the Board for adoption in early 2019 so that the regulations may take effect for the 2019-2020 school year.

2. Update on Data Privacy and Security Activities

New York State Education Law §2-d's focus is the privacy and security of students' personally identifiable information and teacher and principal annual professional performance review data (PII) and imposes requirements on educational agencies and third-party contractors they utilize to provide services that have access to PII.

In fall 2017 the CPO formed the DPAC which is comprised of representatives of the BOCES, RICS, other stakeholders and parent advocates. The DPAC's tasks relate to implementing New York's student data privacy law, Education Law §2-d, drafting regulations to achieve that purpose and securing the privacy and confidentiality of New York State student data. Currently, the DPAC is working to: provide input and recommending provisions for inclusion in regulations to implement New York State Education Law §2-d; provide recommendations to further develop the parent's bill of rights for student data privacy and security; provide input on data security and privacy standards for educational agencies and provide recommendations for best practice guidelines to minimize the collection of personally identifiable information.

The CPO maintains the Student Data Privacy website. In addition to providing a means of communicating SED's privacy updates, the website includes a complaint process and form for parents, educators and education administrators to submit complaints regarding data incidents, breaches or compromises.

The CPO continues to serve as a resource for SED employees and the field for best practices concerning data privacy and security. The CPO has provided education and training to the SED workforce through Data Privacy Day notifications. Additionally, the CPO worked extensively with a procured vendor to develop a comprehensive, interactive privacy training program that will be required for all employees. The office also fields inquiries from school district teachers, administrators, parents and advocates on a wide range of data privacy concerns.

3. Summary of Reported Breaches

- **November 2016**, Notification of a possible incident involving a web site that displayed a scrambled/randomized (“hashed”) set of student data. In response, the affected district immediately blocked all external access to the identified server, removed any sample data from the server and determined that no accounts were compromised.
- **May 2017**, A vendor’s platform was hacked and account information (usernames, passwords, email addresses, and telephone number where provided) were acquired by an unknown, unauthorized third party. No student personally identifiable information was maintained by the platform. Users were advised to reset passwords.
- **May 2017**, A district laptop that contained student data was stolen from a district employee’s car. No student personally identifiable information was accessed.
- **November 2017**, A district which provided report cards electronically through email to aid parents’ participation in students’ academic progress erroneously, due to a merge error, attached a student’s report card to all emails distributed. The process was immediately cancelled, and the affected student and the student’s parents were notified. The district determined to look for a more secure alternative to email for future report card distribution.
- **January 2018**, A vendor experienced a data breach related to SED’s computer based testing program. SED referred this matter to the State Attorney General’s Office. Further, at SED’s request, the vendor took steps to further harden its security posture and participated in an audit of its systems by an external auditor. SED received a preliminary copy of that audit report in February and is awaiting receipt of a more complete, final copy.

4. Summary of Complaints Submitted Pursuant to Education Law §2-d

SED is committed to maintaining the privacy and security of student data and complying with New York State Education Law §2-d and has implemented an online complaint process. Only complaints about possible breaches of student, teacher or principal data are fielded through this process. Such complaints may be filed by a parent of a student or eligible student (student who is at least 18 years of age or attending a postsecondary institution at any age), principals, teachers, and employees of an educational agency.

From September 2016 to December 2017, four complaints were received by the CPO, exclusive of the breaches noted above. All of these complaints were initiated by parents. None of the complaints related to third party contractors but rather concerned school districts’ staff and practices. The CPO’s office worked directly with the Superintendent of each district to ensure the complaints were resolved.

Next Steps

In the spring of 2018, SED plans to conduct a listening tour across the State to seek input from parents, education experts and other stakeholders, on additional elements of the parent's bill of rights, and on sections of the student data privacy law that should be addressed in regulations.

In the fall of 2018, staff will advance to the Board a regulatory proposal regarding Education Law §2-d.

Attachment A - Data Privacy Advisory Council Membership

Member / Contact Information	Organization
Heather Adams New York State United Teachers 800 Troy-Schenectady Road Latham, New York 12110 518-213-6000 hadams@nysutmail.org	Teachers – NYSUT
Tope Akinyemi Chief Privacy Officer New York State Education Department 89 Washington Avenue Albany, New York 12234 Temitope.Akinyemi@nysed.gov	NYSED CPO
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Joseph Baranello Chief Privacy Officer Office of the General Counsel New York City Department of Education 52 Chambers Street New York, New York 10007 JBaranello3@schools.nyc.gov	NYC Department of Education
Kyle Belokopitsky New York State Parent Teacher Association One Wembly Court Albany, New York 12205 518-452-8808 execdirector@nyspta.org	Parent Teacher Association
Alison Bianchi Counsel New York State Education Department 89 Washington Avenue Albany, New York 12234 Alison.Bianchi@nysed.gov	NYSED Counsel’s Office
Kevin Casey Executive Director School Administrators Association of NYS 8 Airport Park Blvd. Albany Airport Park Albany, New York 12210 518-782-0600 kcasey@saanys.org	School Administrators Associaton of NYS

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<p>Joseph E. Fitzgerald Assistant Director Lower Hudson Regional Information Center 450 Mamaroneck Avenue Harrison, New York 10528 914-592-4203 x3233 fitzgerald@lhric.org</p>	<p>Regional Information Center (RIC)</p>
<p>David Gee Director of Technology Bedford Central School District PO Box 180 Mount Kisco, NY 10549</p>	<p>School - IT</p>
<p>Leonie Haimson Executive Director Class Size Matters 124 Waverly Place New York, New York 10011 212-529-3539/917-435-9329 leonie@classsizematters.org</p>	<p>Parent Coalition for Student Privacy</p>
<p>Rose LeRoy New York State Education Department 89 Washington Avenue Albany, New York 12234 Rose.LeRoy@nysed.gov</p>	<p>NYSED IRS</p>
<p>Heather Mahoney Director Madison-Oneida Regional Information Center 4937 Spring Road, PO Box 168 Verona, New York 13478-0168 HMahoney@moric.org 315-361-2804</p>	<p>Regional Information Center (RIC)</p>
<p>Patrick McGrath Superintendent Burnt Hills-Ballston Lake CSD pmcgrath@bhbl.org (518) 399-9141 Ext. 85001</p>	<p>NYS Council of School Superintendents</p>

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<p>Julie Shaw, Esq. Partner Shaw, Perelson, May & Lambert 21 Van Wagner Road Poughkeepsie, New York 12603 jshaw@shawperelson.com</p>	<p>NYS Association of School Attorneys</p>
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