



COLORADO

Department of Education

Colorado's New Data Privacy Law

PTAC-CDE Privacy & Security Training

May 25 and 26th, 2016

Overview

- **Name of Law:** Student Data Transparency and Security Act
- The bill was a bipartisan effort that passed unanimously through both the House and the Senate.
- The law can be accessed here:
http://www.leg.state.co.us/CLICS/CLICS2016A/csl.nsf/fsbillcont3/65C31D600337BF8787257F2400644D7C?Open&file=1423_enr.pdf



Note

- This law is very long and complicated so we are currently doing a great deal of analysis on what the law states and how it needs to be implemented. This guidance is preliminary and may change as our analysis evolves. However, we will work to make sure that when we have solid guidance, it will be shared with you.



Implementation Timelines

- On or after effective date (**August 10, 2016**) – CDE and LEPs cannot enter into or renew a contract with entities that refuse to accept terms of updated contracts and provisions of the bill.
- **March 1, 2017** – CDE must create and make available a sample student information privacy and protection policy for LEPs
- **December 31, 2017** – LEPs to adopt a student information privacy and protection policy
- **July 1, 2018** – Small rural districts to adopt a student information privacy and protection policy



Key Definitions – Student PII

- "Student Personally Identifiable Information" (Student PII) means information that, alone or in combination, personally identifies an individual student or the student's parent or family, and that is collected, maintained, generated, or inferred by a public education entity, either directly or through a school service, or by a school service contract provider or school service on-demand provider.

Key Definitions - Organizations

- "Local Education Provider" (LEP) means a School District, a Charter School authorized by a School District pursuant to Part 1 of Article 30.5 of this Title, a Charter School authorized by the State Charter School Institute pursuant to Part 5 of Article 30.5 of this Title, or a Board of Cooperative Services created and operating pursuant to Article 5 of this Title that operates one or more Public Schools.
- "Public Education Entity" means the Department, a LEP, the State Charter School Institute established in section 22-30.5-503, or a Public School.

Key Definitions – School Service

- "School Service" means an internet website, online service, online application, or mobile application that:
 - (i) is designed and marketed primarily for use in a preschool, elementary school, or secondary school;
 - (ii) is used at the direction of teachers or other employees of a LEP; and
 - (iii) collects, maintains, or uses Student PII.
- "School Service" does not include an internet website, online service, online application, or mobile application that is designed and marketed for use by individuals or entities generally, even if it is also marketed to a United States preschool, elementary school, or secondary school.



Key Definitions – Contract Provider

- "School Service Contract Provider" or "Contract Provider" means an entity, other than a public education entity or an institution of higher education, that enters into a formal, negotiated contract with a public education entity to provide a school service.



Key Definitions – On-Demand Provider

- "School Service On-Demand Provider" or "On-Demand Provider" means an entity, other than a Public Education Entity, that provides a School Service on occasion to a Public Education Entity, subject to agreement by the Public Education Entity, or an employee of the Public Education Entity, to standard, non-negotiable terms and conditions of service established by the providing entity.



Transparency in Data Collection

- Each LEP shall post and maintain on its website clear information explaining the data elements of Student PII that the LEP collects and maintains in the LEP's data system
 - This does not include the Student PII that the LEP transmits to the department.
- The list must explain how the LEP uses and shares the Student PII.
- The LEP shall include on its website a link to the data inventory and dictionary or index of data elements that CDE publishes.



Contracts with School Service Contract Providers

- Each LEP shall ensure that the terms of each contract that the LEP enters into or renews with a School Service Contract Provider on and after the effective date of this article (August 10, 2016), at a minimum, require the contract provider to comply with the requirements in sections 22-16-108 to 22-16-110.
- The next two slides discuss what the Providers are required to do based on the sections referenced above.
- Each LEP shall post and maintain on its website a list of the School Service Contract Providers that the LEP contracts with and a copy of each contract.

Providers Obligations from 22-16-108 to 22-16-110

- A Provider can only collect, use or share Student PII for the purposes stated in the contract. If they want to use the data in another way, they must get consent from the parent or student if over age 18.
- Providers and their subcontractors must:
 - Provide on their website and provide to Public Education Entities information explaining the Student PII data that they collect and how that data is used and shared.
 - Update each Public Education Entity with notice before making material changes to its privacy policy.
 - Provide access to and correction of any factually inaccurate information.
 - Notify the contracting Public Education Entity of any material breach of the contract that results in the misuse or unauthorized access to Student PII upon its discovery. In this case, the Contractor must inform the Public Education Entity of any contract breaches by its Subcontractors.

Providers Obligations cont.

- Providers cannot:
 - Sell Student PII
 - Use Student PII for the purposes of targeted advertising
 - Use Student PII to create a personal profile of the student outside of the requirements of the contract or with the consent of the student or parent.
- A Provider can only share Student PII with a subcontractor provided that they contractually obligate the subcontractor to comply with the requirements of this law.
- Each Provider must maintain a comprehensive information security program.
- A Provider must destroy Student PII upon the request of the Public Education Entity.
- A Provider must destroy Student PII upon the termination of the contract according to the timelines established by that contract or when the data is no longer needed for the performance of the contract.

Breaches by School Service Contract Providers

- If the contract provider commits a material breach of the contract that involves the misuse or unauthorized release of Student PII, the LEP shall determine whether to terminate the contract.
- This decision will be made in accordance with a policy adopted by the governing body of the LEP.
- At a minimum, the policy must require the governing body, within a reasonable time after the LEP identifies the existence of a material breach, to hold a public hearing that includes discussion which includes:
 - The nature of the material breach
 - An opportunity for the contract provider to respond concerning the material breach
 - Public testimony
 - A decision as to whether to direct the LEP to terminate or continue the contract.



Renewal of Contracts

- On and after the effective date of this article (August 10, 2016), a LEP shall not enter into or renew a contract with a School Service Contract Provider that refuses to accept the terms specified in paragraph (a) of this subsection (2) or that has substantially failed to comply with one or more of the requirements in sections 22-16-108 to 22-16-110.
- See slides 11-12 for the vendor obligations from 22-16-108 to 22-16-110.
- The terms specified in paragraph (a) of this subsection (2) are outlined in slide 13 regarding material breaches of the contract that involves the misuse or unauthorized release of Student PII.

List of On-Demand Providers

- Each LEP shall post on its website a list of the On-Demand Providers that the LEP or an employee of the LEP uses for School Services. At a minimum, the LEP shall update the list of On-Demand Providers at the beginning and mid-point of each school year.



- The LEP, upon the request of a parent, shall assist the parent in obtaining the data privacy policy of a On-Demand provider that the LEP or an employee of the LEP uses.

Non-Compliance by On-Demand Providers

- If a parent has evidence demonstrating that an On-Demand Provider that the LEP or an employee of the LEP uses does not substantially comply with the On-Demand Provider's privacy policy or does not meet the requirements specified in section 22-16-109 (2) or 22-16-110 (1), the parent may notify the LEP and provide the evidence for the parent's conclusion.
- 22-16-109 (2) states that the On-Demand Provider must not:
 - Sell Student PII
 - Use or share Student PII for targeted advertising to students
 - Use Student PII to create a personal profile of the student (other than for the purposes of the contract)
- 22-16-110 (1) states that the On-Demand Provider must maintain a comprehensive information security program.

Non-Compliance by On-Demand Providers cont.

- If a LEP has evidence demonstrating that an On-Demand Provider does not substantially comply with the On-Demand Provider's privacy policy or does not meet the requirements specified in section 22-16-109 (2) or 22-16-110 (1) (see prior slide), the LEP is strongly encouraged to cease using or refuse to use the On-Demand Provider and prohibit employees of the LEP from using the On-Demand Provider.
- The LEP shall notify the On-Demand Provider that it is ceasing or refusing to use the On-Demand Provider and the On-Demand Provider may submit a written response to the LEP.
- The LEP shall publish and maintain on its website a list of any On-Demand Providers that it ceases using or refuses to use with any written responses that it receives from the On-Demand Providers.
- The LEP shall notify CDE if it ceases using an On-Demand Provider and provide a copy of any written response the On-Demand Provider may submit. CDE will post this information to its website for a period of 24 months.

Notice to On-Demand Providers

- Each LEP that uses On-Demand Providers shall post on its website a notice to On-Demand Providers that, if the LEP ceases using or refuses to use an On-Demand Provider, the LEP will post on its website the name of the On-Demand Provider, with any written response that the On-Demand Provider may submit, and will notify CDE, which will post on its website the On-Demand Provider's name and any written response.



Privacy and Protection Policy

- On or before December 31, 2017, each LEP shall adopt a Student Information Privacy and Protection Policy that, at a minimum, addresses the issues specified in section 22-16-106 (1).
- Section 22-16-106 (1) discusses the sample Student Information Privacy and Protection Policy that CDE will provide to the LEPs.
- A LEP that is a Small Rural School District shall adopt the Student Information Privacy and Protection Policy by July 1, 2018.
- Each LEP shall make copies of the Student Information Privacy and Protection Policy available upon request to the parent of a student enrolled by the LEP and shall post a current copy of the Student Information Privacy and Protection Policy on the LEP's website.

Parental Rights

- The parent of a student enrolled by a LEP has the right:
 - To inspect and review his or her child's Student PII maintained by the LEP;
 - To request from the LEP a paper or electronic copy of his or her child's Student PII, including Student PII maintained by a School Service Contract Provider. If a parent requests an electronic copy of the parent's child's Student PII.
 - To request corrections to factually inaccurate Student PII maintained by a LEP. After receiving a request for correction that documents the factual inaccuracy, the LEP that maintains the Student PII shall correct the factual inaccuracy and confirm the correction to the parent within a reasonable amount of time.

Parental Complaints



- The governing board of each LEP shall adopt a policy for hearing complaints from parents regarding the LEP's compliance with the requirements of this law.
- At a minimum, the policy must provide a parent the opportunity to submit information to the governing board and receive a hearing by the governing board and must require the governing board to take action on the parent's complaint within sixty days after the hearing.

Non-Compliance with the Law

- If a LEP does not comply with the requirements specified in this law, a student's parent may submit a complaint to the governing board of the LEP in accordance with the complaint policy adopted as described in the prior slide.



CDE Support for Districts

- CDE will develop data security guidance for LEPs.
- CDE will provide LEPs with sample student information privacy and protection policies.
- CDE will provide LEPs with sample contract language for use in contracting with vendors and keep this language up-to-date in light of advances in data technology.
- CDE will make available to LEPs resources that they can use in training their employees in privacy and security.
- On the request of a LEP, CDE will provide the LEP with training related to student information security and privacy.
- Upon receiving information that an LEP has stopped using a vendor due to the misuse of PII, CDE will post that information to its public website.

How to Contact CDE?

Data Privacy Office @ CDE

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