Experts predicted that student data privacy would be a major issue in 2015, and they were right: As of March 26, state legislatures in 41 states had introduced a combined 160 student privacy bills, more than the total number introduced in all of 2014. Many of those bills would give state boards of education a key governing role in protecting student data privacy, and many states already have laws on the books giving state boards this responsibility (see map).

If passed, however, some of the new legislation could hamstring the effective, safe use of data. As more state boards take on this governing role, it is vital that they understand the complicated legal, technical, and political tangle of student data privacy in order to both protect privacy and allow data to be used to ensure students graduate college and career ready.

Data drive the actions of every successful school, providing support for children, teachers, and administrators. Test and homework grades, attendance rates, and information on in-class participation give parents a window into how their child is doing in schools. Student data give teachers a window into students’ past performance so they can help each child from the first day of school. New technology allows teachers to collect data that could help personalize learning. It also allows for early predictions of whether children are likely to fail a class or drop out of high school, giving educators a chance to intervene in time to put students on the road to success.

However, as the amount of collected information grows, public concern over the privacy of student data likewise has increased. Newspaper headlines like “Data Mining Your Children,” “Is Your Child’s Personal Data Safe at School?” and “Student Data Collection Is Out of Control” fuel parental concerns. The few existing federal and state laws aimed at student privacy, such as the 1974 Family Educational Rights and Privacy Act (FERPA), often fall short in protecting digital-age school data collection.

**STATES TAKE THE INITIATIVE**

States and the federal government have been working to close this gap. Existing state laws often put state boards of education in charge of writing detailed privacy policies, serving on “data boards” that make decisions about how data are collected and used, or overseeing compliance with the law. State boards of education in West Virginia and Alabama, for example, have passed data privacy resolutions expressing their commitment to student data privacy and have put new rules in place to protect that data. Both states elaborated on these resolutions in 2014 with full guidance documents for districts. New York created a chief privacy officer position for its department of education, the Virginia Department of Education trains staff on how to protect data annually, and California passed a law that regulates companies that maintain student data. In addition, President Obama and members of Congress have announced plans to introduce federal student data privacy legislation.

Note: This map is based on the author’s interpretation of state laws, regulations, and policies and does not constitute legal advice. The map does not take into account the many SBEs that can pass binding regulations if they have not yet acted on student data privacy.
UNINTENDED CONSEQUENCES
Not all state policies have maintained a balance between the need for timely, accurate information and safeguarding student privacy. In one state, a law passed last year was unclear, and districts believed it constrained them from sharing personal student data with an out-of-state assessment vendor. Fortunately, the law included a provision that gave the SBE the power to clarify the law for districts. In another state, parents must provide signed consent forms before a school can submit student information for scholarships.2 Another state banned the collection of all “psychometric” data, which, at its most basic definition, means any measurement of learning. Several states in the past year banned the collection of “biometric” data without defining what they meant, so that T-shirt or class ring sizes can no longer be requested from students.

As states and the federal government continue to craft laws and policies, it is important to bring all stakeholders to the table—parents, teachers, administrators, lawyers, education technology companies, and chief technology officers—so laws and policies passed in 2015 avoid accidental consequences like these. Throwing out the baby with the bathwater is not the way to move forward; it is essential that states do not inadvertently ban technologies that can help children succeed and compete in today’s global economy.

The ability of technology to effect positive change in children’s lives will only grow, and it is essential that policymakers balance the imperative of protection with the promise of innovation. By passing informed, comprehensive policies crafted with the input of all stakeholders, policymakers can harness the power of data for enabling student success while also protecting privacy.

POLICY RECOMMENDATIONS AND RESOURCES
In order to help state boards of education achieve this balance, NASBE launched an education data privacy project in late 2014. This project will inform and support state boards through publications, meetings, and technical assistance. As part of this commitment, NASBE passed a public education position on student data privacy, recommending overarching elements states should include in their laws and policies (see box).

NASBE helped to draft and signed on to “Principles for Using and Safeguarding Students’ Personal Information,” a list of 10 principles that express the education community’s core beliefs and demonstrate its commitment to building transparency and trust, http://www.studentdataprin ciples.org. Also useful for state policymakers is EducationCounsel LLC’s “Key Elements for Strengthening State Laws and Policies Pertaining to Student Data Use, Privacy, and Security: Guidance for State Policymakers,” http://tinyurl.com/dataprivacyelements.

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NOTES

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