Student Data Privacy: State Legislative Recap 2016

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2013 State Legislative Activity

1 bill related to student data privacy in 1 state.
2014 State Legislative Activity

110 bills related to student data privacy in 36 states.

27 laws passed in 20 states.
2015 State Legislative Activity

188 bills related to student data privacy in 47 states.

28 laws passed in 15 states.

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2016 State Legislative Activity

111 bills related to student data privacy in 34 states.

12 laws passed in 9 states.
35 States Have Passed 73 Laws Since 2013
2016 Session: Overview

Core issues are the same as years past.

• Establishing governance
• Governing the activities of third parties/service providers
• Improving transparency
• Considering the role of parental consent and notification
2016 Session: Overview

States are adopting and elaborating on existing models.

• States are borrowing from each other and iterating on their past efforts

• Most notably, many states introduced bills based on California’s 2014 Student Online Information Protection Act (SOPIPA) and Oklahoma’s 2013 Student Data Accessibility Transparency and Accountability Act
CA’s SOPIPA and OK’s DATA Act Models

35 States have introduced one of two models.

14 states have passed one of those two models.
2016 Session: Regulating Service Provider Activities

Building on SOPIPA model; 17 states introduced 31 bills based on SOPIPA

• **Maryland HB 430** – would establish a council to study and make recommendations on the implementation of the state’s 2015 SOPIPA-based law, and to review and analyze best practices in other states

• **New Jersey A 1272** – would require the commissioner to provide guidance and technical assistance to schools about preventing and responding to data breaches

• **Illinois SB 229** – would apply SOPIPA provisions to pre-K, K-12, postsecondary, and vocational schools

• **California AB 2799** – would expand existing law (SOPIPA) to cover pre-K

• **Virginia HB 519** – would expand existing law (SOPIPA) to include services used by school-affiliated entities (e.g., booster clubs or PTAs)
2016 Session: Comprehensive Approaches

Utah HB 358
- Establishing governance at both state and local levels
- Engaging local data users

Colorado HB 1423
- Supporting local capacity
2016 Session: What’s New?

• Focus on surveys & nonacademic data
  • Several states have introduced bills that govern the use of nonacademic student surveys, mostly by requiring parental notification and consent (i.e., opt-in)
  • State legislation has attempted to limit nonacademic data collection in other ways, including:
    • Prohibiting any national or statewide assessments that collect nonacademic data
    • Defunding the SLDS if it includes any nonacademic data (beyond what is required for program evaluation)

• States must consider ESSA

• Student privacy beyond education data
ACLU Model, Colorado, and Connecticut
Colorado HB 1423

- Builds on both Oklahoma and California models
- Attempted to address the difference between contracts signed with SEAs/LEAs and app-provider relationships
- Lots of technical assistance and guidance must be provided to LEAs
- Many transparency requirements
- Many great provisions that build on lessons learned in other states
- Some unintended consequences could occur
Connecticut HB5469

- Also builds on previous state laws and begins to address the difference between contracts signed with LEAs and app-provider relationships
- Focus on transparency to parents
- Major new responsibilities for LEAs
- Potential accidental consequences could occur
- Task force
Training is Essential

• Anyone who handles data should know how to protect those data.

• Provisions for training appear in only a couple of the more than 400 bills introduced

Human error is a factor in 95% of data security incidents
It Started With...

Student Privacy in Massachusetts K-12 Schools

“Spyware on student computers captures webcam images, screenshots and personal communication...allowed real-time and historical activity tracking, remote webcam activation. School policy did not disclose App usage.”
9 States Commit to Introducing ACLU Model Data Privacy Bills

1. Alabama (2/2/2016)
2. Alaska (1/19/2016)
3. Connecticut (2/3/2016)
4. District of Columbia
5. Hawaii (1/20/2016)
7. Missouri (1/6/2016)
8. Nebraska (1/6/2016)
Types of ACLU Bills

- Student social media privacy
- Student personal technology on campuses
- 1:1 Device privacy
- Student Information Systems (SIS) privacy

https://aclum.org/app/uploads/2015/10/ACLU-Student-Data-Privacy-Model-Legislation-.pdf
Problematic Provisions

- Definition of PII is too broad
- Definition of de-identification sets a likely-impossible standard
- Broad SIS definition
- Sub-contractor issues for SIS
- Applies to both K-12 and Higher Ed
- Paperwork, paperwork, and more paperwork
- Deletion requirements

- Damages
- Only makes student data available to school employees
- These laws are not enough
Interesting Provisions

• Puts a lot of power in the hands of parents (can authorize sending their child’s data to edu service providers)

• Attention to 1:1 devices and data privacy

• Training provisions

• Interesting deletion requirements that allow for SIS research to test and improve their services

• Student privacy – sometimes even from parents

• ACLU wants your feedback!
Other Key Trends in 2016 and Noteworthy Bills

- Early Childhood Student Privacy
- Texas and New Hampshire and classroom video recordings
- Bills relating to student privacy indirectly
- State Board role
- Unintended consequences
In 25 States, SBEs Write Data Collection Policy

- Alabama
- Alaska
- Arizona
- Arkansas
- Colorado
- Florida
- Georgia
- Idaho
- Illinois
- Iowa
- Kansas
- Massachusetts
- Nebraska
- Nevada
- New Jersey
- North Carolina
- Ohio
- Oklahoma
- Oregon
- Tennessee
- Utah
- Vermont
- Virginia
- West Virginia
State Boards Have Significant Authority

- **Green**: SBE has rule-making authority.
- **Brown**: SBE only has rule-making authority for issues designated by legislature.
- **Blue**: SBE does not have rule-making authority.
- **White**: State does not have an SBE.

*New Mexico has a Public Education Commission instead of an SBE.*

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Bills Mentioning State Boards

• 54 bills considered in 2016 mentioned state boards
  • 5 states required state boards to participate in privacy or data commissions
  • 10 bills required state boards to promulgate rules and regulations, or create model policies
  • Some bills restricted SBE access or ability to share data
Unintended Consequences of 2015-16 Laws and Legislation

- Has been a *huge* problem throughout this debate
  - Oklahoma
  - New Hampshire
- Fear-based policies
- Words matter
- Privacy problems with privacy legislation
- The need for input
Non-Legislative Resources
Wisconsin Student Privacy Training Webpage

https://dpi.wi.gov/wise/data-privacy/training
Communications Toolkit

APRIL 2016
STUDENT DATA PRIVACY COMMUNICATIONS TOOLKIT

Student Data Privacy Key Messages
Student Data Privacy Web Page Content
Student Data Privacy Frequently Asked Questions
Student Data Privacy Fact Sheet
Student Data Privacy Letter to Parents/Guardians
Student Data Privacy Talking Points
Rapid Response Tool: Student Data Privacy Newsletter/Article
Rapid Response Tool: Student Data Privacy Lawmaker Brief
Rapid Response Tool: Student Data Privacy Newspaper Opinion Pieces
Rapid Response Tool: Student Data Privacy Social Media Posts


NASBE National Association of State Boards of Education
New Educator’s Guide to Student Privacy

Educator’s Guide to Student Privacy

Technology tools and apps are making it possible for educators and students to collaborate, create, and share ideas more easily than ever. When schools use technology, students’ data—including some personal information—is collected both by educators and often the companies that provide apps and online services. Educators use some of this data to inform their instructional practice and get to know their students better. It is just as essential for educators to protect their students as it is to help them learn.

This guide is meant to help teachers utilize technology in the classroom while protecting their students' privacy.

Download the Guide


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CoSN Trusted Learning Environment Seal

http://trustedlearning.org/
Student Data Privacy Consortium

Massachusetts Student Privacy Alliance

- About MSPA
- Search the Database
- View Participating Districts
- Download Student Data Privacy Agreement
  - V3
  - V2a (Includes Terms of Service)
  - V1
  - Learn more about the Agreement Types
- District Login Page

Are your students safe online? Join us!

https://secure2.cpsd.us/mspa/

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What’s Next?

• ACLU 2.0 bill
• Implementation
• Surveillance and 1-to-1 Devices
• Schools or districts selling data
• One news story away...
DQC Data Privacy Resources

Parents Want Their Children’s Data
DQC’s 2015 Parent Poll Results
April 2016

The Data Quality Campaign (DQC) believes that when parents and educators have the right information to make decisions, students excel. And parents agree, according to a recent survey. DQC’s Parent Poll, conducted online by Harris Poll in November 2015, surveyed 1,095 U.S. parents with children ages 5-17 about their attitude toward data collection and data use in schools.

From individual student data to aggregate student performance data, parents are hungry for information—nearly 9 out of 10 parents surveyed say they need data like grades and test scores to understand how their child is progressing in school. They can help them do their best. For many parents, the top criterion in determining school quality is based on how well their school performs.

Mr. Maya’s Data-Rich Year
When principals are empowered with data, teachers and students do better.

The new generation of principals has an intimate understanding of the impact that data can make on their schools. Principals have access to the data that can help them make better decisions. They also have access to the data that can help them understand how well their teachers are doing. This data helps them to guide their teachers in what they do and how they can improve.

TIME TO ACT
Making Data Work for Students

DQC Data Quality Campaign
April 2016

The Data Quality Campaign (DQC) is a coalition of educators, policymakers, and advocates working to improve the quality of data used to support learning and education decisions. DQC’s mission is to ensure that data is used effectively, transparently, and in a way that serves the best interests of students and educators.

The Data Quality Campaign is supported by the National Association of State Boards of Education (NASBE). NASBE is a membership organization that represents state education leaders in the U.S. and promotes high-quality education policies at the state level.
NASBE Data Privacy Resources

Policy Update
National Association of State Boards of Education

Policymaking on Data Privacy: Lessons Learned

By Amelia Vance
NASBE

May 2016

State legislatures in 2016 are continuing to consider and pass new student data privacy bills. Significant new language and protections have been introduced in all 50 states to address the collection, use, and sharing of student data. These bills generally fall into three categories: (1) state data privacy standards, (2) student consent requirements, and (3) privacy notices. In addition to the new language, states are also revising their existing data privacy laws to reflect the recent Supreme Court decision in United States v. Watson.

Trends in Student Data Privacy Bills in 2016

By Amelia Vance
NASBE

May 2016

Legislatures in 30 states considered student data privacy laws in 2016. In all states, the bills examined the collection, use, and sharing of student data. These bills generally fall into three categories: (1) state data privacy standards, (2) student consent requirements, and (3) privacy notices. In addition to the new language, states are also revising their existing data privacy laws to reflect the recent Supreme Court decision in United States v. Watson.

The State Board Standard

The journal of the National Association of State Boards of Education

The Power of Data

The Journal of the National Association of State Boards of Education

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NASBE’s Data Privacy Work

• State Technical Assistance
  • State visits
  • Policy audits

• Federal Legislation
  • Weighing in on legislation

• Research, Analysis, and Information Sharing
  • State and federal legislation tracking
  • Conversations with states
  • NASBE publications
  • Panels and presentations
Next from NASBE

- Data, Tech, and Privacy Pre-Conference Session October 19 in Kansas City (with afternoon CLE)
- State Policy Database
- Student Privacy Training Bootcamps
- Continuing State Policy Audits
- Ongoing Publications, Webinars: Surveillance & Student Privacy, Data Transparency
Questions?
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Join Us For Our Next Webinar!

June 14: Using a Standards-Centered Framework to Implement ESSA