



MADISON-ONEIDA
BOARD OF COOPERATIVE EDUCATIONAL SERVICES
"Enabling Learners to Excel"

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MEMORANDUM

TO: Participating Policy Service School Districts

FROM: Madison-Oneida BOCES Board Policy Service

DATE: August 1, 2014

RE: Parents' Bill of Rights For Data Security and Privacy

This Memorandum updates the guidance we provided at our June conferences on the requirements of the new Section 2-d of the Education Law, particularly the requirement that "education agencies" post a Parents' Bill of Rights for Data Security and Privacy on their websites. One of the "educational agencies" covered by the law is the State Education Department. On July 29, the Department posted its Parents' Bill of Rights at this page of its website:

<http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>.

Although the Department continues to take steps internally to meet the other obligations imposed on it by Section 2-d, we may not see formal guidance documents or regulations for some time. Therefore, we recommend that each local "educational agency" take steps to adopt a Parents' Bill of Rights, post it on their website, and begin including it in all future contracts covered by the statute. After reviewing the action taken by SED this week, we have prepared the following Q&As that may assist your district in meeting its obligations.

Our office will present one or more briefings on this subject in September. The first program has been scheduled for **Wednesday, September 17 at 8:30 a.m.** at the Madison Oneida BOCES Verona campus. A more detailed program announcement relative to this date and future program dates and locations will follow shortly.

The key terms used in the law, and in our Q&As that follow, are:

- The “educational agencies” required to comply with the new law include all public school districts and boards of cooperative educational services – the Q&As use the term “district” to include both types of entities;
- The “student data” that is protected is all information that is classified as “personally identifiable information” under FERPA;
- The “teacher or principal data” that is protected is the information that is generated for, and results from, the APPR process under Section 3012-c of the Education Law; and
- A “third party contractor” is any entity that receives student data or teacher or principal data from your district pursuant to a written agreement – the Q&As refer to these types of contracts as “covered contracts.”

Q. What is my district required to do?

- A. (1) Post a Parents’ Bill of Rights on the district’s website, including “supplemental information” (described below) about each contract with a third party contractor;
- (2) Include the Parents’ Bill of Rights as part of every contract with a third party contractor.
- (3) After the Department publishes the applicable regulations, adopt a Data Security and Privacy Policy.

Q. Is there a deadline for posting the Bill of Rights and including it in covered contracts?

- A. The law clearly set a 120-day time limit on the Department to take certain steps, and the Department did post its Parents’ Bill of Rights on July 29, which was the 120th day after the law became effective. Section 2-d does not explicitly apply the 120-day limit to other “educational agencies”, and, in any event, July 29 is past. We believe that any district that keeps pace with the Department’s efforts in this area is unlikely to face enforcement action from the Department. To meet community expectations, a Parents’ Bill of Rights should be posted on your website before the beginning of the school year. Also, any agreement entered into with a third party contractor from this date forward should include your district’s Parents’ Bill of Rights and other appropriate or required language.

Q. Is Board action required to implement a Parents’ Bill of Rights?

- A. The statute does not require that the board, or governing body of the district, take action to adopt the Parents’ Bill of Rights, only that the educational agency publish the Bill of Rights on its website, and then include it as part of covered contracts. However, because of the sensitivity of this subject in some communities, and the local option to include provisions

beyond those required by the law, you may wish to present this subject to your board for discussion and adoption.

Q. What should the Parents' Bill of Rights say?

- A. Attached to this Memorandum is a template Parents' Bill of Rights for Data Security and Privacy that you may wish to adapt for your district. Items (1) through (5) are terms that are required by the law to be included.

With respect to item (5), please note that the law provides parents with a right to have complaints about possible breaches of student data addressed, and also requires the Department to establish a complaint procedure (which it is in the process of doing). The law does not explicitly state that parents have a right to have complaints addressed by educational agencies other than the Department, but the Department's Parent's Bill of Rights says that parents have the right to "file complaints with an educational agency ... or with NYSED." We hope to have this conflict resolved when the Department issues regulations. Some districts may wish to wait for clarification in the Department's regulations before creating a local complaint process. However, if your district elects to create a local complaint process at this time, the contact information for your complaint process should be added to item (5).

A district is also required to include in the Parents' Bill of Rights "supplemental information" about covered contracts. On its face, the statute requires that an educational agency include specific information about **each** covered contract. We have prepared our template with "place holder" language on this issue, because we understand that compiling this information will be time-consuming. It is also possible that Department regulations will modify this requirement. We recommend that your district begin the process of compiling this information, however, and we have attached to this Memorandum a template you can use to organize the "supplemental information" about your district's covered contracts.

The new law also authorizes the Department to promulgate additional standard terms for inclusion in the Parents' Bill of Rights. When this happens, we will update our template.

Q. Why is the Department's Parents' Bill of Rights so much longer than the attached template?

- A. The Department incorporated a significant amount of information about FERPA into its document. Most districts have already covered these points in an existing Board Policy. For example, the Madison-Oneida BOCES Board Policy Service has supplied its participating districts with an Education Records Policy, and related regulations. The statute does not require that this information be duplicated in the Parents' Bill of Rights.

Q. What about agreements my district may have with other school districts or boards of cooperative educational services that involve sharing protected data (e.g., CoSers)?

A. Section 2-d does not apply to agreements between educational agencies. However, your district is still responsible for compliance with FERPA, and appropriate language for sharing data with other schools or school officials should be in your Board policy and annual FERPA notification.

Q. Besides attaching the Parents' Bill of Rights, are there any other provisions that we should include in our future agreements with third party contractors?

A. To insure that you have the "supplemental information" that you need to complete your Parents' Bill of Rights, you should include language in each contract that spells out:

- (1) the exclusive purposes for which that vendor is receiving data,
- (2) how the vendor will insure that any subcontractors follow the data privacy and security requirements,
- (3) when the contract expires, and what happens to the data at that time,
- (4) if and how an interested party can challenge the accuracy of stored data,
- (5) where the data will be stored, and
- (6) the security protections that will be taken to ensure the data will be protected.

The statute also requires your contracts with third party contractors to include language requiring that the confidentiality of the shared student data or teacher or principal data be maintained in accordance with federal and state law, and with your policy on data security and privacy after this policy has been adopted.

Similarly, each future contract must include a data security and privacy plan that outlines how all state, federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the educational agency's policy on data security and privacy after this policy has been adopted.

Q. When will we be required to adopt a Data Security and Privacy Policy?

A. Section 2-d says, "Following promulgation of regulations by the commissioner ... each educational agency shall ensure that it has a policy on data security and privacy in place ..." The MOBOCES Board Policy Service will be preparing a template policy for distribution to participating districts when the regulations are promulgated.

Q. How is MORIC handling contracts for the products and services our district accesses through it?

A. The MORIC has begun the process of negotiating required privacy protections into all of its affected vendor contracts, and has developed template contract language designed to insure compliance with Section 2-d.

Please do not hesitate to contact us if you wish to discuss the specific application of these requirements to your district.

TEMPLATE PARENT'S BILL OF RIGHTS

_____ School District

Parents' Bill of Rights for Data Privacy and Security

The _____ School District seeks to use current technology, including electronic storage, retrieval, and analysis of information about students' education experience in the district, to enhance the opportunities for learning and to increase the efficiency of our district and school operations.

The _____ School District seeks to insure that parents have information about how the District stores, retrieves, and uses information about students, and to meet all legal requirements for maintaining the privacy and security of protected student data and protected principal and teacher data, including Section 2-d of the New York State Education Law.

To further these goals, the _____ School District has posted this Parents' Bill of Rights for Data Privacy and Security.

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record. The procedures for exercising this right can be found in Board Policy _____, [insert number and name of District's FERPA or Education Records policy]. You may access this Policy from the District's website.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx> and a copy may be obtained by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.

Supplemental Information About Third Party Contracts

In order to meet 21st century expectations for effective education and efficient operation, the District utilizes several products and services that involve third party contractors receiving access to student data, or principal or teacher data, protected by Section 2-d of the Education Law. The District recognizes that students, parents, and the school community have a legitimate interest in understanding which of the District's vendors receive that data, for what purpose, and under what conditions. The District has undertaken the task of compiling that information, and of insuring that each new contract adequately describes (1) the exclusive purposes for which the data will be used, (2) how the contractor will ensure that any subcontractors it uses will abide by data protection and security requirements, (3) when the contract expires and what happens to the data at that time, (4) if and how an affected party can challenge the accuracy of the data is collected, (5) where the data will be stored, and (6) the security protections taken to ensure the data will be protected, including whether the data will be encrypted.

**Suggested Format for Collecting “Supplemental Information”
About Covered Contracts**

Name of third party contractor:

Name of application or service:

student data principal data teacher data

Data is shared for the purpose of:

The location where the data is stored is:

The contract expires:

When the contract expires:

the contractor must return data to the District

the contractor is required to securely delete any data that remains in its possession.

The contractor will insure that its subcontractors, and any other entity with which it shares data, will abide by the data protection and security requirements by:

The security protections taken by the contractor to ensure that the shared data is protected include:

The data held by the contractor is is not encrypted.

A parent, student, or eligible student may challenge accuracy of the student data collected pursuant to this contract by following the procedures for amending education records, found in Board Policy _____ .

A principal or teacher:

may not challenge the accuracy of the principal or data collected

may challenge the accuracy of the principal or data collected by : _____