



COLORADO'S STUDENT DATA TRANSPARENCY AND SECURITY ACT

HB 16-1423, titled the "Student Data Transparency and Security Act," C.R.S. 22-16-101 *et seq.* (the Act), imposes numerous obligations on school districts and BOCES regarding student data privacy. This memo provides an overview of the Act and its implications.

For more information concerning a district's and BOCES's obligations regarding the confidentiality of student education records under the federal Family Educational Rights and Privacy Act (FERPA) and state law, please see CASB's *Confidentiality of Student Records* memo.

DEFINITIONS

The Act contains the following definitions, which help set parameters upon school districts' and BOCES' responsibilities under the Act. These statutory definitions are ***italicized and bold*** throughout this memo for ease of reference.

1. ***Local education provider (LEP)*** – Includes a school district, charter school or a BOCES "that operates one or more public schools." Thus, all public school districts and charter schools are subject to the Act, but only those BOCES that operate a "public school" must comply with the Act. C.R.S. 22-16-103(4).
2. ***School service*** – An Internet website, online service, online application or mobile application that is:
 - designed and marketed primarily for use in a preschool, elementary school or secondary school;
 - used at the direction of teachers or other employees; and
 - collects, maintains or uses ***student personally identifiable information***.

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 preschool, elementary school or secondary school. C.R.S. 22-16-103(7).

3. ***School service contract provider*** – An entity, other than a public education entity or an institution of higher education, that enters into a formal, negotiated contract with a ***LEP*** to provide a ***school service***. C.R.S. 22-16-103(8).

4. ***School service on-demand provider*** – An entity, other than a public education entity, that provides a ***school service*** "on occasion" to a public education entity, subject to the 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. C.R.S. 22-16-103(9).

5. **Small rural school district** – A school district that CDE identifies as rural, based on the geographic size of the district and the distance of the district from the nearest large, urbanized area and that enrolls fewer than 1,000 students in kindergarten through 12th grade. C.R.S. 22-16-103(10).

6. **Student personally identifiable information (student PII)**– 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**. C.R.S. 22-16-103(13).

Note: The Act’s definition of **student PII** is different than the definition of “student personally identifiable information” contained in the Family Educational Rights and Privacy Act (FERPA), which is the federal law that protects the confidentiality of student education records. The Act also doesn’t distinguish between student “directory information” and **student PII**.

POLICY REQUIREMENTS

The Act requires each **LEP** to adopt policies as follows.

1. A policy regarding a material breach of contract and subsequent hearing.

Specifically, if the **school service 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 “in accordance with a policy” adopted by the **LEP’s** “governing body.” C.R.S. 22-16-107(2)(a).

Such 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:

- a discussion of the nature of the material breach;
- an opportunity for the **school service contract provider** to respond concerning the material breach;
- public testimony; and
- a decision by the **LEP’s** “governing body” as to whether to direct the **LEP** to terminate or continue the contract. *Id.*

Note: The **LEP** is not required to consider terminating the contract if a subcontractor is responsible for the material breach or unauthorized release of **student PII** and the **school service contract provider** terminates the contract with the subcontractor as soon as possible after it knows or has reason to know of the subcontractor’s material breach. C.R.S. 22-16-109(3)(b).

2. A policy regarding student information privacy and protection.

At minimum, this policy must address the “issues specified in C.R.S. 22-16-106(1).” These issues include privacy compliance standards, data retention and destruction procedures, data collection and sharing procedures, consequences for security breaches and staff training.

The **LEP** must then annually review the policy and revise it as necessary “to ensure that it remains current and adequate to protect (**student PII**) in light of advances in data technology and dissemination.” C.R.S. 22-16-107(4).

An **LEP** that is not a **small rural school district** must adopt this policy by December 31, 2017.

An **LEP** that is a **small rural school district** must adopt this policy by July 1, 2018.

3. A policy for hearing parent complaints regarding the **LEP’s** compliance with the Act.

At minimum, the policy must provide the parent the opportunity to submit information to the “governing board” and receive a hearing by the “governing board.” C.R.S. 22-16-112(2)(a).

The policy must also require the board to take action on the parent’s complaint within 60 days after the hearing.

POSTING REQUIREMENTS

The Act requires the **LEP** to post the following information on the **LEP’s** website.

1. The data elements of **student PII** that the **LEP** collects and maintains in its data system, not including the **student PII** that it transmits to the Colorado Department of Education (CDE). C.R.S. 22-16-107(1)(a). Examples of data elements include the student’s name, address, ethnicity, test scores, etc. The information posted must be “clear” and “understandable by a layperson.” *Id.* The list of data elements must also explain how the **LEP** uses and shares **student PII**.
2. A link to the index of data elements that the State Board of Education publishes. C.R.S. 22-16-107(1)(a).
3. A list of the **school service contract providers** that the **LEP** contracts with and a copy of each contract. C.R.S. 22-16-107(1)(b).
4. Information about the data elements of **student PII** that the **school service contract provider** collects, the learning purposes for which the **provider** collects the **student PII** and how the **provider** uses and shares the **student PII**. C.R.S. 22-16-108(1). The **school**

service contract provider must give this information to the **LEP** and “update the information as necessary to maintain accuracy.” *Id.*

5. A list of the **school service on-demand providers** that the **LEP** or an employee of the **LEP** uses, “to the extent practicable.” C.R.S. 22-16-107(3)(a). At minimum, this list must then be updated at the beginning and mid-point of each school year.

6. A list of any **school service on-demand providers** that the **LEP** ceases using or refuses to use because the **provider** failed to comply with the Act. Such posting shall also include any written responses the **LEP** receives from the **on-demand provider**. C.R.S. 22-16-107(3)(c).

Note: The **LEP** must also notify CDE, which is then required to post the name of the **on-demand provider** and any written response on CDE’s website. C.R.S. 22-16-107(3)(d).

7. A notice to **on-demand school service providers** that the **LEP** will post on its website those **providers** that it ceases using or refuses to use due to the **provider’s** failure to comply with the Act. C.R.S. 22-16-107(3)(d).

8. A current copy of the **LEP’s** student information privacy and protection policy (once adopted by the local board of education). C.R.S. 22-16-107(4)(c).

CONTRACT REQUIREMENTS

The Act requires each **LEP** to include specific terms in any contract between the **LEP** and **school service contract provider** that the **LEP** enters into or renews on or after the Act’s effective date of August 10, 2016. At minimum, the contract must require the **school service contract provider** to comply with the Act’s provisions in C.R.S. 22-16-108 through -110. C.R.S. 22-16-107(2)(a).

The Act prohibits the **LEP** from entering into or renewing a contract with a **school service contract provider** that refuses to accept the terms required by the Act or that has substantially failed to comply with these requirements. C.R.S. 22-16-107(2)(b).

Given the complicated nature of these contract requirements, CASB recommends that districts and BOCES work with their own legal counsel to ensure contracts with **school service contract providers** comply with the Act.

INFORMATION TO PARENTS

The Act also requires **LEPs** to provide specific information to parents, as follows.

1. Upon the parent’s request, the **LEP** must “assist” the parent in obtaining the data privacy policy of a **school service on-demand provider** that the **LEP** or employee of the **LEP** uses. C.R.S. 22-7-107(3)(a).

2. Upon the parent's request, the **LEP** shall make copies of the **LEP's** student information privacy and protection policy available to the parent. C.R.S. 22-16-107(4)(c). This requirement is in addition to the required posting of the **LEP's** student information privacy and protection policy on the district's website.

3. If the parent has evidence demonstrating that a **school service on-demand provider** that the **LEP** or employee of the **LEP** uses does not substantially comply with the **on-demand provider's** privacy policy or does not meet the Act's requirements, the parent "may" notify the **LEP** and provide the evidence for the parent's conclusion. C.R.S. 22-16-107(3)(b). Although the Act doesn't specify any action by the **LEP** once it receives such an allegation, presumably the **LEP** should investigate the allegation and then respond to the parent, given the parent's ability to file a complaint for the **LEP's** alleged noncompliance with the Act, the **LEP's** posting obligations regarding **school service on-demand providers**, etc.

CASB'S SUPPORT

CASB's legal department worked with school district attorneys to develop an acceptable contract addendum to meet the Act's contract requirements. This sample contract addendum was approved by the Colorado Council of School Board Attorneys on December 10, 2016 and is now available on the CASB website. CASB's legal and policy departments developed sample policies to address the Act's policy requirements that are available to those CASB members that subscribe to CASB's policy support services. Finally, CASB will continue to work with state policymakers and CDE to help provide clarity and support to members with their implementation of this bill.

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