



**COLORADO**  
Department of Education

Colorado State Board of Education

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
COLORADO DEPARTMENT OF EDUCATION COMMISSION  
DENVER, COLORADO  
February 13, 2014, Part 2

BE IT REMEMBERED THAT on February 13, 2014,  
the above-entitled meeting was conducted at the Colorado  
Department of Education, before the following Board  
Members:

Paul Lundeen (R), Chairman  
Marcia Neal (R), Vice Chairman  
Elaine Gantz Berman (D)  
Jane Goff (D)  
Pam Mazanec (R)  
Debora Scheffel (R)  
Angelika Schroeder (D)



1                                   CHAIRMAN LUNDEEN:    We'll come back to  
2                                   order.   Good afternoon, the State Board of Education will  
3                                   now convene a study session concerning education data  
4                                   collection, security and use.   We would title this:   Why  
5                                   and How Student Data is Different in the Age of the  
6                                   Cloud.

7                                   We welcome the public, our special guests,  
8                                   legislatures and policymakers, and look forward to having  
9                                   a vibrant discussion regarding these issues.

10                                  This work is in part an outgrowth of our  
11                                  previous work and study session concerning  
12                                  (indiscernible) in May of last year.   At that study  
13                                  session, representatives from in Bloom, Jefferson County,  
14                                  the Jefferson County School District, and the Electronic  
15                                  Privacy Information Center, also known as EPIC, along  
16                                  with CDE staff participated.

17                                  I would ask that my colleagues on the  
18                                  Board hold their questions until the conclusion of the  
19                                  presentation, unless it's a specific, pointed, clarifying  
20                                  question.   And I anticipate this will be the beginning of  
21                                  an ongoing dialogue.   This is certainly not an issue that  
22                                  will be resolved anytime soon.   It's something that will  
23                                  evolve as the technology continues to evolve and it's an  
24                                  important issue.

25                                  Mr. Commissioner?



1 MR. HAMMOND: Thank you, Mr. Chair. And  
2 before I turn this over to Dr. Asp and the panel and  
3 he'll introduce them; as the Chair stated, this really  
4 was an outgrowth from a study session we had, and I'm  
5 really surprised at how time flies, back in May of last  
6 year.

7 And the interesting thing from that, work  
8 has not stopped this whole arena of privacy. At one  
9 point, as you know, we brought in Epic to really  
10 reevaluate our policies. We -- from their  
11 recommendations we've implemented everyone one of them  
12 and gone beyond that considerably, and we'll talk to you  
13 about that today.

14 I also have to thank -- I see those folks  
15 here from Jefferson County. They, through this whole  
16 course of time have also brought in people and expertise,  
17 and we've tried to glean whatever we can from their  
18 district and from the consultants they brought in. And  
19 quite frankly what's been interesting about this process  
20 is that once we hear of anything out there from anybody,  
21 that we're able to get from other states -- we're --  
22 we're now to a point, we compare it against what we've  
23 developed.

24 And before we start out, I think there's  
25 really three important documents that all Board Members



1 should have in front of you. What we have developed, and  
2 as you know, as a state agency -- the first one, you're  
3 going to see Information, Security and Privacy Policy.

4 CHAIRMAN LUNDEEN: And I would point out,  
5 these are being duplicated. If you didn't get a chance  
6 to pick them up, they'll be available for the public on  
7 the table out front here as well.

8 MR. HAMMOND: They are in Board Docs,  
9 they'll be on the table, but this is our internal policy.  
10 Quite frankly, every one of these is a work in progress  
11 because as we've learned on privacy, it constantly  
12 changes based upon what we see that we can affect, and  
13 sometimes we can't, based upon the law, and what the  
14 legislature may make in changes. So that's one thing  
15 we'll talk about today.

16 The second one is district guidance. It's  
17 another document you have, it's called District Guidance.  
18 That's all we can do to districts. We can advise -- this  
19 is where the legislature, and certainly this is a  
20 framework for what we -- it will come out today that -- I  
21 know there is various legislative members looking at  
22 privacy right now, but we think that we've been through  
23 quite a bit where we can recommend to districts, these  
24 are things you should consider in the arena of privacy.

25 As you get into this, or enter into



1 contracts at each district, based upon their size, they  
2 can review and do as they wish. Unless there is  
3 precedent by law that tells the districts otherwise.

4 And finally, what we've learned from some  
5 of the other states. What's been interesting, we have a  
6 little data collection and protection sheet. It's a two  
7 page sheet we have here and you'll see in your packet.  
8 It used to be we said, okay, if you want to know what we  
9 collect, we collect nothing unless it's required by law.  
10 So that's pretty simple in our case as a state.

11 Some states are different, but in our case  
12 that's the way things are. And we used to refer  
13 everybody to the data dictionary. Well, that's just  
14 (indiscernible) is the authority source for everything.  
15 That's not transparent for the public and the public  
16 would have a hard time understanding that. So even  
17 though that's available, we've tried to really condense  
18 it down and make things a lot more user friendly for  
19 individuals.

20 So with that, we've listened to you, what  
21 you wanted to see out of a study session. We have about  
22 a 45 minutes presentation or so, and we'll walk you  
23 through that. And that still leaves us a good hour for  
24 questions and answers from you.

25 Again, I've never seen a field that



1 changes, I think, by the week. And we want to set  
2 ourselves up also as a depository of sound practices that  
3 we're seeing out there. So with that, I will turn it  
4 over to Dr. Elliot Asp to start our conversation. Thank  
5 you, Mr. Chair.

6 MR. ASP: Mr. Chair?

7 CHAIRMAN LUNDEEN: Please, go ahead.

8 MR. ASP: Well, good afternoon, Members of  
9 Board. Our goal this afternoon is to provide you with  
10 some background information to inform your discussion.  
11 Before I introduce my fellow panelists here, and we  
12 review our agenda briefly, I just want to frame our  
13 presentation for just a moment, if I could.

14 The idea of collecting student data is not  
15 new. When I was in school in the '50s and '60s and  
16 teaching in the '70s, and I think I just dated myself,  
17 unfortunately. We collected the student data, and it was  
18 stored in a file, an actual file folder, in a database  
19 called a "filing cabinet" in an office someplace.

20 The security around that sometimes is very  
21 good depending on who the staff was in that office and  
22 whether or not they locked it up or if a teacher happened  
23 -- or somebody else happened to look at that file, and  
24 whether they kept it confidential or whether they left it  
25 open.



1                   But there were two things that made this  
2                   less of an issue then. One is -- and was kind of a  
3                   negative piece in some ways, and that is that data was  
4                   real hard to organize and access for teachers or others  
5                   who wanted to use it for educational purposes. To help  
6                   improve instruction, meet kids' needs, and so on.

7                   That was difficult to do because as a  
8                   teacher I had to walk down to the --- and go through the  
9                   file and actually write out notes or whatever I might be  
10                  able to access to help me. The second piece that -- that  
11                  made it less problematic is that if there was a security  
12                  breach then, it was much harder to widely disseminate  
13                  that information.

14                 It could be shared and it might get out in  
15                 the school, but it wouldn't go directly onto the internet  
16                 and we didn't have any social media other than chatting  
17                 back and forth in the hallway.

18                 Well, as we move into this today, that  
19                 situation has changed. And so especially the idea that  
20                 we're collecting a lot of data on students that's stored  
21                 in electronic format, and if there's a breach of  
22                 security, it can be very easily disseminated on a wide  
23                 scale basis.

24                 In fact, this quote from the Report in  
25                 Privacy and Cloud Computing in Public Schools, which came



1 from the Center for Law and Information Policy at Fordham  
2 University, kind of captures that. And if you don't  
3 mind, I would just like to read it.

4 "As public schools in the United States  
5 rapidly adopt Cloud computing services to fulfill their  
6 educational objectives and transfer increasing quantities  
7 of student information to third-party providers, privacy  
8 issues become more salient and contentious. Because this  
9 data is not only being collected and stored, it's often  
10 stored in a database that's no longer at the site, or  
11 it's in the Cloud."

12 So facilitate your discussion today, we'd  
13 like to review the Department's work in keeping data  
14 secure and examine current statute in that regard and  
15 specifically here is what we're about today. Dan  
16 Demiglia (ph), our Chief Information Officer -- Domagala,  
17 excuse me, Chief Information Officer, is going to review  
18 the kind of data that's collected by CDE and I recall  
19 that the commissioner said we don't collect any data  
20 that's not authorized by law. Dan will also talk about  
21 practices for security and the procedures that we use.

22 Sally Pennington and Tony Dyl from the  
23 Attorney General's Office will review current Colorado  
24 statute. They'll also give you a brief introduction to  
25 FERPA, the Federal law, and then take us through what's



1 on the books around these issues in Colorado.

2 Then Kady Lanoha, who is our Senior Policy  
3 Associate, and also an attorney in her own right, will  
4 take us through CDE policies and guidance and I will  
5 remind you that we have some policies that we follow as a  
6 department, and then we provide guidance to our  
7 districts, and that's all we're able to do.

8 And Kady will also review policy ideas  
9 from other states that might help us to think about what  
10 we need to do in Colorado. And I'll talk a little bit  
11 about next steps. And we'll turn it over to you for  
12 discussion.

13 One last piece before I turn it over to  
14 Dan, is to remind you, why do we collect student and  
15 educator data? And we collect this to serve student need  
16 and enhance our educational mission in schools and  
17 districts in the state.

18 So the question isn't about, should we  
19 collect this or not, it's more about what's appropriate  
20 to collect and how do we safeguard it so we can use it  
21 for the positive intent behind the reasons we collected  
22 this. And that's a lot of what will be driving our  
23 discussion today. So with that, I will turn it over to  
24 Dan.

25 MR. DOMAGALA: Great, thank you, Dr. Asp.



1 Mr. Chairman, and Members of the Board, good afternoon.  
2 I'm Dan Domagala, Chief Information Officer for the  
3 Department.

4 What I'd like to do is walk through a  
5 document that Commissioner Hammond referenced, and that's  
6 titled State Level Student Data Collection and  
7 Protection. It's got the dark blue heading on the top  
8 and there should be some hard copies available for the  
9 members of the audience as well. This document is also  
10 available on CDE's website under a site index called Data  
11 Privacy and Security.

12 So -- in fact, all of the documents we'll  
13 go through today are posted on the CDE website.

14 So as been mentioned, using data  
15 effectively, responsibly, and securely, is foundational  
16 to what the department is doing. And foundational to  
17 improving student performance. When it comes to data --  
18 data collection and capture, really it's -- what we're  
19 driving towards is the efficient capture of information,  
20 trying to minimize that burden on our school districts  
21 and administrative units, effectively use that  
22 information, and while we're doing both of those, make  
23 sure we're responsibly protecting all the information,  
24 whether it's student information or other information.

25 So this document outlines some of the key



1 questions and methods for how we're securing that  
2 information. As has been mentioned before, the Family  
3 Education Rights Privacy Act, or FERPA, establishes a  
4 baseline for us. But we go beyond that. And I will talk  
5 about some ways that we do go beyond that, as will the  
6 other panelists.

7 One thing to mention as we go into some of  
8 our practices here is that CDE has never experienced a  
9 breach of data and that is a track record that we're very  
10 proud of, and we're working hard to maintain that record  
11 as we go forward.

12 Given the changes in technology landscape,  
13 that continues to be a challenge for us, but it's  
14 something we're very dedicated to, and again, we're proud  
15 of the track record. A lot of hard work goes into that  
16 and we intend to maintain that record.

17 So going through the document, a good  
18 question is, what student information does CDE collect?  
19 And CDE collects a multitude of information beyond the  
20 student, but when it comes to individually identifiable  
21 student information, there is really a pretty limited set  
22 that we collect. It starts with student demographic  
23 information -- very basic information like last name,  
24 birthdate, gender. And tied with that is enrollment  
25 information. So where a student is enrolled in the



1 state, what their grade level is.

2 We also collect information about program  
3 participation and that's if students are enrolled in a  
4 program such as free and reduced meals or special  
5 education. Those are really the basic demographics that  
6 CDE collects pertaining to enrollment.

7 Now for those students -- for the subset  
8 of students in the state that are enrolled in specific  
9 programs, there is additional student level information  
10 that is collected. So for special education, for  
11 instance, there is disability type and some student  
12 individual information around things like individual  
13 education plans and discipline incidents. Same with  
14 English language learners and some other programs that  
15 the state and the Federal Government provides.

16 So enrollment information, also specific  
17 program information, and finally at a student level, the  
18 state collects assessment information for those students  
19 who are in assessed grades, which is grades three through  
20 eleven.

21 So that includes information on our state  
22 testing, TCAP program right now, soon to be CMAS. ACT  
23 information in 11<sup>th</sup> grade, and also for those students  
24 taking alternative CSAP test, under special education,  
25 there are different student elements that are collected



1 as part of that too.

2 So really in a nutshell, when it comes to  
3 student information, the state is collecting information  
4 about enrollment, about program participating and about  
5 performance. That is all the -- all the state collects.

6 Why does CDE collect that information?

7 Well, as Commissioner Hammond mentioned, there is a state  
8 or a federal warrant for every piece of information that  
9 the state collects, and that includes student  
10 information, educator information, and school or district  
11 level information.

12 We don't collect any information for the  
13 fun of it. Again, we're trying to reduce that massive  
14 burden that's put on school districts and administrative  
15 units around the state by collecting only what's  
16 warranted.

17 Where do we store the information? All  
18 information -- the student level information -- is stored  
19 here on site at the Department of Education in the data  
20 center. That's up on the fifth floor. We do keep a  
21 secure encrypted disaster recovery copy of our  
22 information, that's stored off-site through a contracted  
23 vendor. We do also process information for -- for  
24 instance our assessment information is processed by a  
25 third party vendor -- contracted vendor -- but once that



1 assessment data is processed, it's stored at the state  
2 and we provide safeguards around that information like we  
3 do all their other information.

4 On the back page -- moving right along  
5 here, how is student information used? Well, Elliot  
6 touched on some of these. At an individual student  
7 level, student data is used for allocation of funding for  
8 determining the allocations statewide.

9 UNIDENTIFIED VOICE: (indiscernible)

10 MR. DOMAGALA: Sure, sorry, is that a  
11 little better?

12 UNIDENTIFIED VOICE: Yeah.

13 MR. DOMAGALA: Thanks. Also on the  
14 individual student data, those measures really to  
15 accountability, which is revolving around state  
16 assessments. Also, calculating individual student  
17 growth, which occurs at a state level. Those are the --  
18 the -- that's the type of information that the State uses  
19 for individual student -- individual student data uses.

20 As far as aggregated student data uses,  
21 things like school and district performance reports,  
22 evaluation and measurement of different programs, school  
23 and district improvement plans, also the multitude of  
24 federal reporting that CDE provides, and also public  
25 reporting. Those aggregated reports are all using the



1 student data as a source and aggregating that information  
2 for public and federal reporting.

3 So getting into how we safeguard the  
4 information. A major component on safeguarding  
5 information is controlling access to it. So who is  
6 authorized to see that information, how do we  
7 authenticate the -- the people who are authorized to see  
8 that information? And CDE employees, an identity  
9 management process. It's also called single sign-on. So  
10 any system that provides information, there's a log-in  
11 process. And a secure log-in process that the state  
12 administers in conjunction with the local districts  
13 around the state. We have what are called local access  
14 managers or LAMs -- L-A-Ms -- that determine at a local  
15 level who is authorized to have access to student level  
16 information. CDE works hand-in-hand with those local  
17 access managers to again, authenticate and authorize any  
18 access to student level information.

19 Related to that is things like strong  
20 passwords, expiration of accounts, and as I mentioned,  
21 the local access management of those authorized people  
22 who can access student level information. We also  
23 monitor all access and attempted access into -- into  
24 CDE's systems, and in fact in our budget request, we're  
25 looking for additional dollars to -- to upgrade those



1 monitoring. And again, stay on top of the emerging  
2 technology here.

3 We do intrusion penetration, vulnerability  
4 testing. We have external sources do that to see if  
5 there are holes in our -- in our systems. The Governor's  
6 Office of Information Technology provides often random  
7 checks of our systems, and so those are most appreciated.  
8 We would rather be obviously proactive to any  
9 vulnerabilities we have, rather than experience something  
10 after the fact.

11 All of our laptops and mobile devices at  
12 this state level here are -- are equipped with password  
13 locks, so if a laptop or mobile device is lost or stolen,  
14 they cannot access any of our state systems. And all of  
15 our staff here at CDE go through security awareness  
16 training.

17 We use different levels of encryption when  
18 it comes to student information. The use of what's  
19 called a state assigned student ID or SASID, that's a  
20 level of encryption in itself. Rather than using student  
21 names and student -- other student information, we're  
22 using a key -- a key value. And in fact, we go even one  
23 step further, we have an encrypted SASID, or an ESASID  
24 that we use within our systems to further protect that  
25 student information.



1                   We also use database level encryption and  
2                   so that's within our data systems, we can -- and we do --  
3                   encrypt data either at a full table or table space level,  
4                   and also we can encrypt specific columns, which could be  
5                   the SASID number; we could encrypt a last name, or say a  
6                   social security number for educators.

7                   Encryption also happens while data is in  
8                   motion or in transit. And so all the information --  
9                   student-level information and otherwise, is transmitted  
10                  to the state, utilizes a couple security measures. One  
11                  is a secure file transfer protocol, or SFTP, and also any  
12                  website that's collecting information, uses what's called  
13                  HTTPS, which is hypertext transfer protocol with secure  
14                  (indiscernible), and that's common for any financial  
15                  transactions that occur over the web. We use the same  
16                  technology here at CDE.

17                  Physical security. I mentioned the data  
18                  centers here on premise. We have controlled access to  
19                  that data center. Also controlled access to this  
20                  building off hours. We also have video surveillance on  
21                  both ends to use the building and the data center. And  
22                  one last thing on safeguarding information, any aggregate  
23                  report that we provide, we also utilize small cell size  
24                  suppression, or inside suppression. So for example, if a  
25                  small school has one female fourth grader, an aggregate



1 report is not going to display that information, it will  
2 withhold the information until there's enough -- enough  
3 records or enough data to prevent individual  
4 identification of the individual student.

5 So that's how we safeguard information.

6 As far as who has access to the student data, I mentioned  
7 a local access management policy. Again, only authorized  
8 and authenticated personnel are allowed into CDE systems.  
9 There are a few information services -- Information  
10 Management Services team members -- members of my team,  
11 that have access. And then contracted vendors. But  
12 specific security clauses and parts of the obligations  
13 also have access to limited sets of student information.

14 Question on when are individual student  
15 data's archived or deleted? Current policy is that all  
16 individual data is encrypted, we render it not  
17 individually identifiable and we store it in our  
18 warehouse indefinitely. There's historical value to that  
19 information in current policy. It's exactly that, where  
20 we're storing that information indefinitely. But it is  
21 stored in an archive format using partitioning and also  
22 using encryption. Access to that archived information is  
23 restricted and it's also heavily monitored, just like we  
24 monitor access to the systems, we monitor access to the  
25 archived information.



1                   And then I mentioned that we go beyond  
2 FERPA in many ways and there's just a few examples here  
3 towards the last part of the two page document. We have  
4 a formal information security policy within the  
5 Department. In fact, all state agencies are required to  
6 have a formal information security policy. That's  
7 reviewed annually by the Governor's Office of Information  
8 Technology and the Chief Information Security Officer of  
9 the State. We also provide district guidance, and we'll  
10 talk about those as we go along. Kady Lanoha will talk  
11 specifically about the two policies that Commissioner  
12 Hammond mentioned. We have those policies reviewed by  
13 national experts and advisors. We've mentioned the  
14 Electronic Privacy Information Center. We also get  
15 advice from the U.S. Department of Education's Privacy  
16 Technical Assistance Center, or PTAC, as it's called.  
17 And we really appreciate the guidance we get from those  
18 groups and other national groups.

19                   We have an internal data governance  
20 committee and this committee is charged with determining  
21 ownership and accountability for information. Make sure  
22 that information is only provided to those who have a  
23 need for that information and also to underscore the  
24 proper use of that information -- student level  
25 information. That's our Internal Data Governance



1 Committee. We also have an Internal Institutional Review  
2 Board, or IRB, as it's called. And that -- that board  
3 reviews all external requests. Typically those come from  
4 researchers and the appropriate providing student  
5 information for those research requests that the  
6 Department gets.

7 All of our contracts with external vendors  
8 include notification clauses around the data breach that  
9 may potentially happen with a vendor, and also liability  
10 clauses in the event of a data breach.

11 And finally, we do annual independent  
12 security audits from external firms. In addition to our  
13 vulnerability tests, we also do audits around our  
14 security policies and procedures that we follow here at  
15 the Department. Again, we want to maintain concurrency  
16 and be -- be one step ahead of any of the bad guys out  
17 there as far as student privacy and information  
18 (indiscernible).

19 So to reiterate, we've never experienced a  
20 breach here at the Department and we fully intend to keep  
21 it that way. And with that, I'm going to turn it over,  
22 with the Chair's permission, turn it over to State  
23 Attorneys, Tony Dyl and Sally Pennington.

24 CHAIRMAN LUNDEEN: You have my permission.

25 MR. DYL: Good morning. Tony Dyl; Senior



1 Assistant Attorney General, and with me is Sally  
2 Pennington. This is your introduction to Sally. Sally  
3 comes to us from private practice. She was a law clerk  
4 to the Honorable Federal Judge Christina Arguao  
5 (ph)before that, and in addition to her law degree, she  
6 has a masters in Education with a specialty in special  
7 education and a particular interest in education. So I'm  
8 going to turn it over to her to present to you today.

9 MS. PENNINGTON: Hello everybody, nice to  
10 meet you.

11 UNIDENTIFIED VOICE: You're going to need  
12 the microphone, Sally.

13 MS. PENNINGTON: I usually have a loud  
14 enough voice, so this is new. My presentation will  
15 address how Colorado law goes above and beyond FERPA. So  
16 first I'm going to start with FERPA. FERPA is baseline,  
17 and as I mentioned, states can go above and beyond that  
18 particular law. In the upcoming slides you will see how  
19 Colorado law does do that. FERPA applies to CDE schools  
20 and local education agencies that receive grant funds.  
21 Mainly, it prohibits the disclosure of personally  
22 identifiable information in student education records,  
23 unless the exceptions permits disclosure.

24 There are certain conditions where prior  
25 consent is not required to disclose personally



1 identifiable information, and that's when the disclosure  
2 is to other school officials -- to officials in the state  
3 and local education authorities and to organizations  
4 conducting studies on behalf of educational agencies.  
5 And in connection with a health or an emergency  
6 situation.

7                   The Office of Information Technology does  
8 require that each public agency develop an information  
9 security plan and that particular plan should address  
10 assessments of risk and potentials for breaches in  
11 security. Each school year, the Department shall  
12 calculate the aggregate adequate longitudinal academic  
13 growth for each student, and the Department must ensure  
14 that the state data report system is capable of  
15 protecting student data privacy. The data pipeline which  
16 move -- which moves required education information from  
17 school districts to the CDE, assigns a SASID, which Dan  
18 discussed previously, that stays with the student  
19 throughout their public school career.

20                   CHAIRMAN LUNDEEN: Break down the acronym.  
21 SASID?

22                   MS. PENNINGTON: It's the Student  
23 Information ID.

24                   CHAIRMAN LUNDEEN: Thank you.

25                   MS. PENNINGTON: So the exchange of



1 student records, the Department of Higher Education and  
2 Colorado Department of Education, this particular statute  
3 enables the direct transfer of student information  
4 between the two departments. And the data that is  
5 collected may provide students with information  
6 concerning the transition from high school into an  
7 institution of higher education.

8 A school district shall not release  
9 education records of a student without the prior consent  
10 of the parent, except as provided by FERPA, and I had  
11 discussed previously what those -- some of those  
12 exceptions were. A school district shall not release  
13 directory information to any person, agency, or  
14 organization without complying with FERPA requirement of  
15 allowing parents to prohibit release of information.  
16 This is one particular area that is different from --  
17 it's the current status of Colorado law.

18 Turning to the next slide, this particular  
19 statute is one particular area where Colorado law goes  
20 above and beyond FERPA by explicitly listing what the  
21 state cannot collect. So prior written consent from a  
22 parent -- a student's parent -- must be obtained before  
23 gathering any information listed below, which includes  
24 political affiliations, income, social security number  
25 and other information. The state -- Colorado does not



1 collect this particular information, it only collects  
2 aggregate data.

3 District forms for obtaining parent  
4 consent to release personally identifiable information  
5 concerning the parents or child's education records must  
6 specify what records are going to be released, the  
7 purpose for that, and what is -- why are you asking to  
8 even release these records? And they have to be -- the  
9 parent has to sign off on that.

10 When an entity believes that there isn't a  
11 breach, they must provide notice, unless a law  
12 enforcement agency determines that that will impede the  
13 criminal investigation.

14 Lastly, the Data Reporting And Technology  
15 Act is intended to improve the collection of data by  
16 streamlining the submission and reporting of data from  
17 school districts to the CDE and to the Federal  
18 Government. And this is -- they call the data  
19 dictionary, this particular statute does create the data  
20 dictionary, which defines data elements that are going to  
21 be collected, and the methods by which that data is going  
22 to be collected. There is a legislative mandate that the  
23 State Board must review the rules for implementing FERPA  
24 and adopt an interpretation of FERPA that will facilitate  
25 the exchange and sharing of student information to the



1 greatest extent possible in compliance with FERPA.

2 And now I'm going to turn it over to Kady.

3 MS. LANOHA: Thanks. As Elliot indicated,  
4 I'm just going to provide an overview of where CDE  
5 currently is with its Information Security and Privacy  
6 Policy. And first we wanted to note that this policy is  
7 not new. We've had data security and privacy policies in  
8 place for many years. This is just a document that pulls  
9 that information together in one place, and we've also  
10 set up a website where you can access this policy, you  
11 can also find Dan's fact sheet that he went over. The  
12 district guidance that I'm going to go over next. And  
13 then links to other resources including the Fordham study  
14 that Elliot mentioned. And the link for that website is  
15 on the agenda summary sheet and Board facts.

16 So I'm just going to walk through the  
17 sections of the policy, which are outlined up here, and  
18 we obviously have a lot more information than we have  
19 time to get through, so I'm just going to get through  
20 what I can in the next ten minutes or so.

21 To begin with, we've been working with the  
22 (indiscernible) Department of Education's privacy  
23 technical assistant center, and the state's education  
24 data advisory committee, to monitor the changes in law  
25 related to data collection and reporting, and to ensure



1 that our policies are up-to-date with those. And also  
2 incorporate best practices that we hear about. We also  
3 make an effort to train our staff on these efforts. So  
4 first, all new employees at CDE, or all contracted  
5 partners are required to sign an (indiscernible)  
6 agreements concerning permissible uses of state  
7 technology and the safeguarding of data. And then  
8 second, employees are required to participate in an  
9 annual training on information security and privacy and  
10 that's mandatory for continued access to CDE's network.  
11 And then finally we provide targeted training for  
12 specific groups, so one example is that we provide an  
13 online training in ethical and professional standards for  
14 protecting human research participants. And so all CDE  
15 employees that conduct evaluations or research activities  
16 are required to participate in that training.

17 And our policy also goes over internal  
18 uses of data. It's important to note that even though  
19 CDE is a very large organization, there are only a  
20 limited number of employees who actually have access to  
21 educator and student data. And data is only accessible  
22 to the employees who actually have an appropriate need  
23 for the data. We also have the data management committee  
24 that Dan mentioned that's responsible for monitoring how  
25 data is handled and helps us to identify who has a



1 legitimate interest in various data.

2 We also talk in our policy about breaches  
3 in security. We've developed a process for reporting  
4 breaches and that includes a process for conducting  
5 internal investigations and identifying appropriate  
6 consequences if a breach were to occur.

7 Then next our policy touches on educator  
8 data, so even though a lot of our attention today is  
9 focused on student data, it's probably important to note  
10 that our policy also addresses the protection of  
11 administrator and educator data. As you know, CDE has  
12 responsibility to issue and renew licenses and to link  
13 student achievement data to teachers and to monitor  
14 implementation of local evaluation systems under Senate  
15 Bill 191. So we're responsible for managing and securing  
16 information that's sensitive and confidential in those  
17 areas too. And while educators are entitled to access  
18 their own data, statutes prohibit as from ever, reporting  
19 this information in any way that would reveal the  
20 identities of individual educators. So we have policies  
21 in place that ensure that we only ever share the  
22 information when it's de-identified or in the aggregate.

23 Next our policy shifts to student data and  
24 one thing about student data, it's important to  
25 distinguish between the de-identified or (indiscernible)



1 student data and the personally identifiable student  
2 data. For the data that is de-identified, and might be  
3 used by third parties to conduct research, we have a  
4 process -- a specific process in place for considering  
5 those kinds of requests. So academic researchers, or  
6 other state agencies are required to submit proposals  
7 that are reviewed by our institutional review board,  
8 which Dan mentioned. And requestors are required to meet  
9 all the criteria that we have outlined, and that includes  
10 the training on ethical and professional standards for  
11 protecting human research participants.

12 Then in terms of the data that is  
13 personally identifiable, CDE generally cannot share this  
14 information without parent consent. That said, there are  
15 several exceptions under federal law that allow us to  
16 share data without parent consent and our policy  
17 highlights four of those exceptions. First, we can  
18 disclose data to school officials that have a legitimate  
19 educational interest in the data -- so that's what allows  
20 us to share the student growth model results with  
21 district employees that districts have designed should  
22 receive that information.

23 Second, we forward students' information  
24 to districts or post-secondary institutions where a  
25 student transfers, or indicates that he wants to enroll.



1 And we only do this if the district has requested us to  
2 do that and they've notified parents up front this kind  
3 of disclosure could occur.

4 Third, we share data for -- with  
5 organizations that conduct studies for us, in order to  
6 administer assessments or improve instruction. And then  
7 finally, we share data with authorized individuals to  
8 evaluate federal or state educational programs.

9 So when we share data for one of those  
10 latter two reasons, for the studies or for the program  
11 evaluations. We first established data sharing  
12 agreements that have to meet very specific criteria and  
13 I'm not going to go over those criteria today, but they  
14 are outlined in your -- in the policy and it's kind of  
15 towards the end there, several checklists. And those --  
16 those checklists include both what is required by FERPA  
17 and then additional requirements that we've added. And  
18 then also beyond what's required by FERPA, CDE has  
19 provisions in those data sharing agreements that ensure  
20 they were able to monitor and enforce those integrated.  
21 So we require those agreements to address the data  
22 security program that the third party has in place and we  
23 maintain the right to conduct audits of those systems.  
24 And we also maintain the right to review the data before  
25 it gets published. So we do this to ensure that the



1 student identities are not revealed and that the reports  
2 reflect the original intent of the agreement.

3 And then in the event that there were a  
4 complaint about one of those agreements, CDE would  
5 investigate the complaint, and if we were to find a  
6 violation, we would withhold data from that party for a  
7 minimum of five years and we could also pursue legal  
8 penalties under state contract law.

9 So that's the overview of our state level  
10 policy. And then we also have our sister document that  
11 provides guidance to districts in implementing their own  
12 security and privacy policies. And as mentioned, this is  
13 just guidance, we're not permitted to direct districts to  
14 do anything beyond what's required by federal and state  
15 law. But as you'll see, that guidance document mirrors  
16 CDE's policy and we recommend that districts put in place  
17 many of the same procedures and protections that we  
18 maintain at the state level. For instance, we recommend  
19 that districts, just like the state, create an inventory  
20 of all the data that they collect, and that they include  
21 a description of why it's collected, where it's kept, how  
22 it's safeguarded, and when it's destroyed.

23 When dealing with soft data like videos  
24 that are taken in the classroom, or records of  
25 observations by administrators, we recommend that this



1 information be deleted after one year, unless there is a  
2 valid safety reason for maintaining it, and that  
3 retention has been approved by the superintendent.

4 UNIDENTIFIED VOICE: Can we ask questions  
5 now?

6 CHAIRMAN LUNDEEN: If it's a substantive  
7 pulls us offline question, I'd rather hold it and come  
8 back. If it's just a clarification, I'd take it now.

9 UNIDENTIFIED VOICE: I'll hold it.

10 CHAIRMAN LUNDEEN: Please.

11 MS. LANOHA: Okay. We also recommend that  
12 districts establish a clear definition of a student  
13 record and they define what a student data record entails  
14 and what information follows a student from year to year.  
15 We encourage districts to develop an internal process for  
16 implementing and refining their security and privacy  
17 policies and that they provide a range of training  
18 opportunities to keep their staff up-to-date on those  
19 policies.

20 We recommend that districts designate a  
21 system for monitoring access to student data and that  
22 they ensure that their property -- proper -- the data is  
23 properly handled by those designated individuals. And  
24 then they also should have a clear method for addressing  
25 any breach in security.



1                   As Sally indicated, FERPA applies equally  
2                   to CDE and to districts, the same rules and requirements  
3                   for data sharing agreements applied to both of us. But  
4                   our policies go beyond what's required by FERPA and we  
5                   think that the extra provisions that we've included in  
6                   our data sharing agreements and the extra steps that we  
7                   take to monitor and enforce those agreements are best  
8                   practices, and the districts should adhere to those as  
9                   well.

10                   And then finally our district guidance  
11                   addresses how districts should communicate with parents  
12                   about data collection. Sally provided an overview of the  
13                   parents' legal right to know about and to opt out of and  
14                   amend their student's records, and our guidance provides  
15                   an overview of those same laws for districts. We've also  
16                   created a model parent notification letter that adheres  
17                   to the requirements in FERPA and we're working on adding  
18                   the state requirements to that model document.

19                   Finally, we encourage districts to also  
20                   think about the unique policies that they might want to  
21                   implement at the local level so that they might choose to  
22                   provide parents with more opportunities to opt out of or  
23                   into particular data collections or systems.

24                   So just to conclude this portion of the  
25                   presentation, our policies are obviously more detailed



1 than we're able to go into. But I think what we want to  
2 convey is just that we've been very careful to make sure  
3 that we adhere to all the legal requirements that apply  
4 to us, and then we've also taken steps -- extra measures  
5 -- to protect educator and student data.

6 And then in the last several years states  
7 have been passing legislation related to various aspects  
8 of data collection and protection and we're just going to  
9 highlight some of what we know about what these -- what  
10 we know about what some of these districts are -- are  
11 doing.

12 In the area of transparency, both Maryland  
13 and Oklahoma of recently passed bills that require state  
14 level governing boards to publish inventories of the data  
15 that the state collects. And so as you saw, we have a  
16 similar book on the -- or law on the Colorado books that  
17 require us to create a data dictionary. And in practice  
18 we've made this publicly available and we cite the legal  
19 authority for -- in the purpose of each data element, but  
20 our statute could go a little but further to just codify  
21 those current practices.

22 In terms of restrictions on data  
23 collection, Nebraska recently passed a bill that requires  
24 that all student disciplinary records be destroyed after  
25 a student has been gone from a school for more than three



1 years. And in contrast, Colorado doesn't have laws that  
2 specify a deadline for the destruction of records, so  
3 that's an interesting thing there. Another area where  
4 we've seen several bills surface is in ensuring that data  
5 is protected once it's been collected. So Maryland and  
6 Oklahoma have passed bills that require the state to  
7 create a data security plan that includes privacy  
8 compliance standard, security audits, reach notification  
9 procedures and data retention and disposition policies  
10 and we have a Colorado statute that requires each public  
11 agency to create an information security plan, but that  
12 could go a little bit further and include some of these  
13 other elements like authorizing access to the data and  
14 the data retention and disposition policies.

15 Massachusetts and Oklahoma have passed  
16 (indiscernible) that require all contracts involving data  
17 sharing with private vendors to include penalties for  
18 non-compliance and as I mentioned, CDE already requires  
19 in that in all of our agreements that we have penalties  
20 for non-compliance. But this isn't required by statute  
21 and it's also not something that districts uniformly  
22 implement. And there's a Massachusetts bill which hasn't  
23 been passed yet, that prohibits vendors who offer cloud  
24 computing services from using student data for commercial  
25 purposes. And FERPA essentially does this already, but a



1 law like that creates kind of even clearer and more  
2 explicit restrictions.

3 Then finally, there are also a couple of  
4 bills that we've learned about that are designed to  
5 adjust the role of parents in data collections and  
6 security. There is a New York bill that's been  
7 introduced that would allow parents the right to opt out  
8 of data sharing efforts that involve third party vendors.  
9 And while we have flexibility to do that in Colorado  
10 districts, and the state has flexibility, we are not  
11 required to do that by statute.

12 And then the last one I was going to touch  
13 on is Arizona that recently passed a bill that allows  
14 parents to report violations of FERPA up to the  
15 commissioner and -- or the State Board of Education and  
16 if the matter isn't resolved after a certain amount of  
17 time, the state can withhold up to ten percent of school  
18 state funding. And under FERPA the Department -- the  
19 U.S. Department of Education can respond to violations of  
20 FERPA by withholding federal program funding. But this -  
21 - a law like that just extends it to state funding. So  
22 that's interesting.

23 That's kind of our list of what we've  
24 learned about. I know there is a lot more going on than  
25 just that. I'm going to (indiscernible).



1 MR. DYL: Thanks, Kady. Well, I think you  
2 can see that CDE has taken a lot of steps to be in  
3 compliance with not only law, but what makes sense in  
4 terms of the policies we're hearing about, and we've  
5 identified some places where we could go farther.

6 I want to return to just sum up a bit. We  
7 turn to Dan's original set of questions when he talked  
8 about what our policies and practices were at CDE, and  
9 just highlight some emerging issues that have come out  
10 even in our preparation for this study session with you.  
11 So when I look at the first question there, "What student  
12 information is collected by the state or districts?"  
13 There's an emerging area here around the advising  
14 feasible and secure ways for -- for parents to review and  
15 edit their student's data. And this is particularly  
16 around being able to do this online. That's a piece that  
17 folks haven't solved yet, but it's going to be one that's  
18 going to emerge even more, we think, in the next few  
19 months and years, certainly.

20 A second piece is around this idea of why  
21 is data collected? And having -- thinking through the  
22 impact of parental opt out on data collection and how  
23 that affects the utility for using that data to improve  
24 instruction or for program evaluation for other  
25 legitimate purposes, and -- and so there is some tension



1 between those two pieces that again, is emerging for us  
2 and it will be an ongoing discussion.

3 A third one here, and I think both this  
4 third bullet and the last one, how is data used in  
5 safeguard, who has access? Kady talked about this some,  
6 as did Dan and Sally. This whole idea of being able to  
7 help particularly local districts be able to put the kind  
8 of safeguards into contracts as they rely more and more  
9 on outside vendors to provide services for them,  
10 particularly vendors where the information is stored off-  
11 site or in the Cloud so that they can guarantee that --  
12 that data is used for the purpose for which it was  
13 originally intended and that it's safeguarded in a way  
14 that's in compliance with -- with state law and federal  
15 law. And those pieces are ongoing as well. A couple of  
16 these issues are coming out of the Fordham report, which  
17 emphasized some real issues that local districts have  
18 with -- with Cloud vendors particularly.

19 And then finally, and Kady talked about it  
20 as well, where data is kept and for how long. An issue  
21 that's emerging here is around observation-based  
22 assessments that might involve video recordings of  
23 student behavior, for example the teaching and learning  
24 goals, early readiness assessment. At one time it was an  
25 obser-, it's always been an observation piece where



1 teachers made observations about students, but now the  
2 technology of videotaping those observations rather than  
3 writing them down has made those easier for teachers to  
4 do. On the other hand, it's created this issue around  
5 how long do we keep these videos, who is in charge of  
6 them, and so on, that Kady talked about earlier.

7 So those pieces are -- are emerging as we  
8 speak, and they'll be pieces -- I know, among others,  
9 that you'll be wanting to talk about.

10 And then finally, just to give you some  
11 next steps that we're looking at -- our first one here is  
12 to finalize guidance to local education agencies,  
13 districts and charters. Kady referred to this already.  
14 We've -- with the help of folks from both Dan's office  
15 and also Tracy (indiscernible) has helped us a lot to get  
16 a webpage up and going around these issues, and we're  
17 providing links for districts to come and see our --  
18 access our guidance as well as a series of best practices  
19 that will be put in there. We'll continue to do that.

20 We'll continue to educate CDE staff on  
21 data security processes and procedures. We'll take this  
22 -- what we're learning from this piece, for example, and  
23 go to an all-staff meeting and be able to start to take  
24 the education of our staff even farther around data  
25 security processes and procedures. We've been working



1 with legislators; we'll continue to do that, to do two  
2 things: One is to consolidate current legislative  
3 requirements. You heard from Sally there's a lot in law  
4 already that covers data security. However, when you go  
5 to find it, as some of my colleagues here know, you have  
6 to look all over the place to find it. It's a little bit  
7 here, and a little bit there, and so we're working with  
8 legislators to say: Could we consolidate that through  
9 some legislative action so that you can pull that piece  
10 up and you know exactly what those pieces are, and folks  
11 can access that.

12 And then continuing to strength existing  
13 safeguards for student and educator data as -- as these  
14 issue emerge and we learn more.

15 And then finally, particularly with Dan  
16 and Kady's help, and Teresa's as well, is to stay abreast  
17 of new developments in regard to data security. We want  
18 to constantly be proactive around those issues, not  
19 reacting to something that we found out later. And so  
20 those are the next steps that we have, and we're excited  
21 to take your questions and to hear your discussion.

22 CHAIRMAN LUNDEEN: Excellent, thank you  
23 very much. A very interesting glimpse into where we're  
24 at on this -- thank you for the presentation.

25 Let me just suggest -- here's the way I'd



1 like to proceed. We've got a hard stop at 1:30; it's now  
2 just approaching 12:30. I would like to allow my  
3 colleagues to interact, ask questions of the panel. I  
4 only have 16 bullet points on my screen here, so I think  
5 it will go fairly quickly, is my perception. Should  
6 there be time left between now and our hard stop, what  
7 I'd like to do is allow people -- and we won't do a sign-  
8 up sheet, we'll just give you a chance to queue up if you  
9 want, to ask questions of the panel, if there is time  
10 remaining. Beyond that, we'll take analogue questions if  
11 anybody wants to leave a question in writing, we'll  
12 accept that. Or if you prefer the digital environment,  
13 which this conversation obviously is about, you can go to  
14 our website, hit the State Board "Contact Us" and leave  
15 your question there. We'll pick it up and pass it on.

16 So that's the way I'd like to go with  
17 that. I'll open the floor to my colleagues and ask them  
18 -- did you have a comment, Mr. Commissioner? Elaine,  
19 please go ahead.

20 MS. BERMAN: Well, I'll reiterate what the  
21 Chairman just said. That was an excellent presentation  
22 and we appreciate the thoroughness that you've approached  
23 this topic. Kady in particular, when you were giving  
24 your presentation, my takeaway from the information  
25 that's been presented is that at the state level, at the



1 Department of Education, we are doing an excellent job of  
2 safeguarding student privacy and data security. When you  
3 started describing, Kady, you used the word, we  
4 "encourage" school districts to do A, B, C, D, E, F, G.  
5 Well, there's a big gap between "encourage" and having  
6 the school districts actually -- then being required to  
7 safeguard the data the way we're doing at the state. So  
8 I think I'd like a comment from somebody or somebodies  
9 about the "encourage" versus "required" because it seems  
10 like -- I mean, when we have heard feedback about this  
11 issue, it's less how we're handling the data, and more  
12 how districts are handling the data.

13 MR. HAMMOND: Mr. Chair?

14 CHAIRMAN LUNDEEN: Please, Mr.  
15 Commissioner.

16 MR. HAMMOND: Kady, I'll take that one.  
17 And please, add anything to it. You're exactly right and  
18 that in this state, despite probably what some people  
19 believe where we're at today, is a very local controlled  
20 state. I cannot, except by statute, direct the district  
21 to do anything. Or by rule. And when it comes to what I  
22 said all along, when we went through this whole stuff  
23 with Jefferson County and (indiscernible) and you know, a  
24 lot of lessons learned. And what we said from that study  
25 session that we had back in May, that would should come



1 out of that is if we're really in the business of trying  
2 to improve ourselves, how can we also help districts?  
3 Knowing the districts are at many different places  
4 depending on size, staffing, et cetera. But it would be  
5 a shame, in my opinion, if we didn't come out of all of  
6 this and have lessons learned that we could recommend to  
7 districts a very comprehensive set. Some districts would  
8 probably far exceed some of those. Others haven't even  
9 thought about some of those things. And that's why we  
10 see the guidance here.

11 I was also reminded by KASBE, very  
12 frankly, last week, that you can't tell the districts  
13 what to do. I mean, our job is to write the policy.  
14 Well, that's -- that's fine and dandy, but I do have an  
15 obligation, from what we've learned, to advise. And I  
16 take that very seriously, especially around this whole  
17 issue of data. So that's what we have done.

18 If there -- in this session, which I  
19 believe there will be, an examination of data privacy,  
20 primarily whether the state, or how it impacts districts,  
21 there may be enabling legislation that we will then pass  
22 rule, that will actually dictate to districts what can  
23 and cannot they do. Right now, all I can do is advise.

24 I don't know if that clarifies that for  
25 you, but that's kind of the state we're in, in this



1 state.

2 UNIDENTIFIED VOICE: (Indiscernible) Kady  
3 has a --

4 UNIDENTIFIED VOICE: Go ahead.

5 MS. LANOHA: We just wanted to add that  
6 we've also heard from districts that there is a capacity  
7 issue. These are very complicated matters and just  
8 understanding where to start and getting help and funding  
9 are issues for districts.

10 UNIDENTIFIED VOICE: And what happens is  
11 sometimes even the small ones, you just don't think about  
12 things that you should. And I think, Dr. Schroeder, you  
13 informed us of a case at an event where sometimes what  
14 looks like nice free software from vendors that collects  
15 information on students in the classroom, really helps  
16 the teacher and the workload. But where is that  
17 information going? And probably the IT Department never  
18 even knew about, okay? And nobody ever thought about it.  
19 Well, they should think about it, and that's why we've  
20 learned through some of this that's sometimes really  
21 touchpoints of vulnerability that aren't thought about.

22 So what I hope from this, and once we send  
23 this out to districts, and we'll keep revising this  
24 continuously, it just gives something for districts to  
25 think about. Especially when they enter into contracts.



1 They should have that protection. And again,  
2 reiterating, anything that's collected, should we know  
3 how long is it there, who's going to use it, who's going  
4 to see it, and when is it destroyed?

5 MS. BERMAN: Follow up on it?

6 CHAIRMAN LUNDEEN: Elaine, please go  
7 ahead.

8 MS. BERMAN: Was there something else that  
9 anybody was going to say on this before I jump in?

10 UNIDENTIFIED VOICE: No.

11 MS. BERMAN: So -- so I think I hear you,  
12 but the reality is that we've got some very large  
13 districts in the state of Colorado and the vast majority  
14 of them are not -- like, three-quarters of them are not  
15 large districts. And I would imagine they don't have the  
16 capacity. They don't have the resource capacity  
17 financially, or staff, in a staff perspective, to -- to  
18 address some of these issues. So at some point I think  
19 we need to think of what -- if we were to ask them, what  
20 assistance would they want from us to help them, given  
21 that they probably don't have either the sophistication  
22 or the capacity or whatever, to do what we're asking them  
23 to do and should be done.

24 MR. HAMMOND: You raise a very good point.  
25 I turn to Dan -- we both learned one thing, you know, the



1 data pipeline -- a project that we've rolled out  
2 throughout the state, it's something new and different  
3 that people have to get used to, and it's a challenge at  
4 times, but we've touched every district, and we've heard  
5 from every rural district, I would suspect, about some of  
6 these challenges. I think you're probably in the best  
7 position. We know some of the issues that the districts  
8 are facing out there. Can you help address some of that  
9 question, Dan?

10 MR. DOMAGALA: Absolutely. So I think the  
11 point is that there are varying capacities at both the  
12 large district and even at a small district level. Some  
13 small districts are definitely on top of this and they  
14 have an excellent technology situation. Some large  
15 districts are the opposite where you would think they may  
16 have capacity, but maybe not. So I think there are some  
17 -- I know there are some leaders in the state on both  
18 sides of the spectrum from small districts to large  
19 districts.

20 And while there are certain things the  
21 state can or can't do, there are certain things the  
22 districts can do as far as collaboration or districts  
23 working with each other. Most of these facilitate these  
24 things in rural areas too. There are several avenues to  
25 -- to move discussions forward and to address some of the



1 issues that we're bringing up today. Legislation is one  
2 of them, but I would say there are other ways to do that  
3 too.

4 CHAIRMAN LUNDEEN: Angelika?

5 MS. SCHROEDER: Well, to add to this  
6 discussion, here is an ah-ha that I finally had when I  
7 attended the conference where I heard about teachers  
8 downloading free software. Every time that I download  
9 something new, there's an agreement. And it doesn't go  
10 until I check -- I don't read that whole agreement. In  
11 fact, I learned that there were a few companies that put  
12 inside of it, when you get to this point, we'll send you  
13 ten dollars, if you just do such and such. In order to  
14 figure out how many people actually read the agreements.  
15 And folks in state offices are the ones that found that.  
16 So I'm pleased that at the state level, looks at the  
17 careful. But I know I'm not that careful.

18 Do I know that every teacher who downloads  
19 some tool that they're going to use to help him or her be  
20 a better teacher, have more information, data, reads  
21 through that and has a look for -- the look for that  
22 says, whatever data I put in here will not be shared with  
23 anyone. I mean, this is getting down to the gritty  
24 pieces that I don't -- I wasn't realizing that I was  
25 signing a contract when I clicked that "I Accept". And



1 that kind of training at the granular -- is necessary at  
2 the granular level, because I am -- I am now confident at  
3 the state level, having attended that conference with  
4 nationwide, state representatives on data. They know  
5 about it, they do it, they assured me that for the most  
6 part, districts, when they hire an outside vendor to help  
7 them, also know to look for that. But once you get  
8 deeper and deeper into it and you get to these contracts  
9 that are not for pay, but where people aren't paying  
10 attention, that are the freebies, where we run into  
11 trouble. And that's where suddenly parents start getting  
12 advertisements and come-on's all of a sudden they believe  
13 that either at the district level or at the state level,  
14 we are sharing private data. That's not where it's  
15 coming from. It's coming from a completely different  
16 source. And it challenges -- I think it challenges us in  
17 the State of Colorado to ensure that all the folks who  
18 are serving our kids, in fact have that information, have  
19 that understanding, know what to look for in those  
20 contracts in order to assure themselves that this is a  
21 tool for them only, and not an opportunity to share  
22 information for other purposes.

23 CHAIRMAN LUNDEEN: Pam -- we'll come this  
24 way to the left. Pam?

25 MS. MAZANEC: Who is our outside vendor?



1 Is it stored in the Cloud?

2 UNIDENTIFIED VOICE: For assessment  
3 information we work with Pearson, is our vendor. We're  
4 also on the tail end of a contract with McGraw-Hill.

5 MS. MAZANEC: I'm sorry, what was that  
6 last part about McGraw-Hill?

7 UNIDENTIFIED VOICE: CTB McGraw-Hill is a  
8 contracted vendor, also around assessment information in  
9 the state.

10 MS. MAZANEC: And what is the online  
11 training that employees take? Is that provided by the  
12 vendor or did you do it yourself, or --?

13 UNIDENTIFIED VOICE: The online security  
14 awareness training is provided to us by the Governor's  
15 Office of Information Technology, or OIT for short. And  
16 so we can customize, or we can tune that towards CDE  
17 specific, but for the most part we use the -- the same  
18 security awareness that other state agencies use.

19 CHAIRMAN LUNDEEN: Dr. Scheffel?

20 MS. SCHEFFEL: I'm just going to follow-up  
21 on your question -- did you want a follow-up? Thanks for  
22 that. Can you elaborate on the vendors that CDE employs  
23 besides Pearson and McGraw-Hill, and are those agreements  
24 posted on the website and do they contain stipulations  
25 for parental notice, consent and access?



1 UNIDENTIFIED VOICE: Sure, Mr. Chair,  
2 every contract that CDE enters with is publicly  
3 available. When it comes to student data in particular,  
4 I mentioned the two contracts around assessment, and we  
5 also are at the tail end of a contract with Deloitte.  
6 Deloitte helped us build the data pipeline system that  
7 Commissioner Hammond mentioned -- that's the exchange of  
8 information from district to state. We also have an  
9 outstanding contract with a local company called  
10 Infolink, and Infolink provides assistance to us on a  
11 reporting tool -- we use a tool called Cognos, which is  
12 tied in with our data pipeline and other reporting  
13 pieces. Infolink is a local expert that augments our  
14 staff as far as reporting student level information.  
15 Those are the active vendors right now when it comes to  
16 student information.

17 MS. SCHEFFEL: Amplify is another one?

18 UNIDENTIFIED VOICE: Amplify is part of  
19 the assessment for early childhood, I believe. And  
20 that's for a -- the subset of students that are part of  
21 that early childhood piece. The Amplify contracts, I  
22 believe though, are at a local level and not at a state  
23 level.

24 MS. SCHEFFEL: I mean, I think, I guess  
25 what I'm getting at is, if we -- if the public wanted to



1 know what are -- who are all the vendors that access our  
2 kids' data, what would the list look like? It sounds  
3 like there are several that have large pieces to play  
4 with the Department of Ed's data, but then there are, I  
5 would guess, many, many more, having to do a specific  
6 grant programs that do store student data. Am I right  
7 about that? I mean, early childhood, the READ Act, and  
8 there's all these legislative initiatives that require  
9 data.

10 UNIDENTIFIED VOICE: At a state level,  
11 it's those vendors that I mentioned and I do agree the  
12 idea of providing easier access to that information,  
13 while other contracts are available, I don't know off the  
14 top of my head exactly where all of those state contracts  
15 are. But to organize those around different initiatives,  
16 that's -- that's, I believe, a good idea, to make it more  
17 transparent. It is out there, but like our data  
18 dictionary, we can take measures to -- to aggregate that  
19 transparency around the contracts that we do enter in.

20 MS. SCHEFFEL: I mean, I think the Fordham  
21 Report, one of the recommendations was that Department of  
22 Education would list the contracts on the website along  
23 with the agreements, and along with the issues related to  
24 access notice and consent. And I guess I would ask, how  
25 often does CDE review those contracts, because the



1 vendors often change them without notice and the parents  
2 are not privy to how they've changed. So I think those  
3 Fordham suggestions -- or recommendations, are -- I think  
4 it would be really helpful to parents.

5 MR. HAMMOND: Go ahead with that. You can  
6 address that.

7 UNIDENTIFIED VOICE: The Fordham -- yes,  
8 there are some -- the Fordham Report has some very good  
9 things to think about. I totally agree. And that's,  
10 again, as the landscape continues to evolve, we'll  
11 continue to stay on top of those and provide as much  
12 transparency as possible around those existing contracts.  
13 But I will say, the contracts we do have in place with  
14 vendors, those are carefully vetted ahead of time. We  
15 have several different security clauses and breach  
16 clauses that go into those contracts, and those continue  
17 to be refined and updated as we move along.

18 So I'm confident that those contracts are  
19 -- are well crafted to let the vendors know what the  
20 expectations are around student privacy and what the --  
21 what the repercussions are if there is -- if there is a  
22 failure to adhere to those expectations around student  
23 data privacy.

24 MS. MAZANEC: I just have a follow-up.

25 CHAIRMAN LUNDEEN: Please.



1 MS. MAZANEC: If a parent wanted to  
2 explore what is held in a database for his or her child,  
3 how would they go about that? And if they wanted to  
4 amend it, how would they go about that? And if they  
5 wanted it expunged, how would they go about that?

6 UNIDENTIFIED VOICE: So today --

7 MS. MAZANEC: You're saying they keep it  
8 in perpetuity, but let's say a parent, based on the  
9 ability to opt out said, "I want this information  
10 expunged at the end of twelfth grade, or at the end of  
11 sixth grade, or whatever." You mentioned IEPs,  
12 disciplinary proceedings that are in the database.

13 UNIDENTIFIED VOICE: So with the exception  
14 of special education information, CDE has not parental  
15 information. So if a parent was to come to CDE and  
16 request access to individual student data, we would have  
17 no way at the state of connecting that parental request  
18 with student information. A request such as that would  
19 be preferable to go through the district, the local  
20 level, and then we would, at the state level, of course  
21 work with the local level in reviewing the request,  
22 identifying if there is incorrect information, how it's  
23 correct -- ideally corrected at the source, which again,  
24 all of the source information at the state level really  
25 comes from the district level.



1                   So if there is a question of the  
2 information about a student, ideally that's corrected at  
3 the source, which is the -- which is the local level.  
4 But of course, CDE would work with the local to address a  
5 student -- or a parent request about student information.

6                   MS. MAZANEC: So you are saying a parent  
7 could go to their district and request all the  
8 information held on behalf of their student -- personal  
9 information, achievement information, whatever -- and  
10 then the district would work with CDE to get the  
11 information? Is there some law or procedure that a  
12 parent could know about? Is that somewhere?

13                  MR. DYL: Tony Dyl. Yes, that's actually  
14 provided for under FERPA. There's specific provisions in  
15 FERPA for the rights of inspection and review of  
16 educational records by parents. And also for procedures  
17 for amending educational records. So that -- and I  
18 suspect that notices probably are supposed to be provided  
19 at the district level for those. Although for my own  
20 experience, those tend to come at -- in small print on  
21 forms that you're just signing as you're enrolling your  
22 student. So I'm not sure how much they really -- it --  
23 it really is actual notice.

24                  MS. MAZANEC: So it sounds like a district  
25 issue, but what I hear from parents is that they don't --



1 they can't get it. They try, they ask the district, they  
2 put in a request to the state -- to their school board  
3 and nothing happens. So I don't know if the Department  
4 of Ed would have a role in linking parents to the right  
5 information or -- or surfacing the law that says that  
6 they can get it, you know, in detail. But I just hear  
7 from parents that say, hey, I -- I'm shut out. I -- I  
8 try to ask, no one calls me back, I don't -- there's  
9 nothing on the website that says, "click here, put in a  
10 request for the information from your student", so --

11 UNIDENTIFIED VOICE: Mr. Chair. Yeah,  
12 that is -- that's an issue for us because we -- that is  
13 at the local level. We can't -- you know, we can ask if  
14 it comes to our attention, but we can't -- that's the  
15 uniqueness of how we collect data. We just can't pull a  
16 student's records together. It has to come from the  
17 district. And the second issue that we face -- who are  
18 we talking to? I mean, the districts know the parents.  
19 The cases -- and there are cases out there, I can testify  
20 that myself, at a district level, where in custody issues  
21 certain parents have access to information, other --  
22 other guardians don't.

23 And so we're not in the position at a  
24 state level -- and that's why the information is kept so  
25 different. We just can't pull that together at a -- at a



1 state level where that record is kept at a local level.

2 CHAIRMAN LUNDEEN: Dr. Asp?

3 MR. ASP: Thank you. I will reiterate  
4 what Dan said earlier about this. It's similar to what  
5 happens at a school. You -- somebody goes to pick up a  
6 student at a school and the school verifies that in fact,  
7 that's the parent and that that's okay for the student to  
8 leave. We have no parent information here. We can't  
9 verify that the person who's making the request of CDE is  
10 in fact entitled to see that information. Someone with  
11 the district can do that and our -- with one exception,  
12 the data we collect comes from the district. So I  
13 appreciate Dr. Scheffel's concern about how to support  
14 parents in doing that. That's probably something we'd  
15 have to work with individual districts, rather than --  
16 because we can't access -- we can't -- we have no way to  
17 do that in a safe way from our database.

18 CHAIRMAN LUNDEEN: Pam?

19 MS. MAZANEC: Did -- you said something  
20 about you're creating a webpage for CDE to talk about the  
21 best practices, et cetera. Would that be a good place  
22 perhaps to explain to parents and community members how  
23 this -- how this identification works and that, you know,  
24 at the very least explain it. Perhaps explain that it's  
25 a local control issue as well, without maybe creating a



1 law hotline for parents to go to the CDE, but at least  
2 explain to them how it work so that they know.

3 UNIDENTIFIED VOICE: Absolutely agree.  
4 There is also a parental resource page that CDE  
5 maintains, and it would be a good idea to have a link  
6 from that page as well so we can follow up on that.

7 CHAIRMAN LUNDEEN: Dr. Scheffel?

8 MS. SCHEFFEL: I just wanted to reference  
9 the FERPA changes in 2008 and 2012, which were  
10 accomplished through regulation by the federal  
11 government, Department of Ed, and they redefined  
12 authorized representative that expanded the universe of  
13 individuals that could access student data and also  
14 redefined education program in a way that expanded the  
15 reach of individuals to private student achievement data.  
16 I wonder if you could address how that has influenced  
17 those changes in FERPA. What Colorado does at the state  
18 level to protect student data, those -- those  
19 redefinitions.

20 UNIDENTIFIED VOICE: Does anybody want to  
21 take that on?

22 UNIDENTIFIED VOICE: Off-hand, I'm not --  
23 I'm not aware that that has led to any significant change  
24 in how the state operates with that data. As -- as I  
25 recall, there was some changes to -- to how you do third



1 party vendors, but they were -- I don't think they've  
2 necessarily changed how we have been dealing with it  
3 here.

4 MR. HAMMOND: Yeah, it hasn't changed one  
5 thing from (indiscernible).

6 UNIDENTIFIED VOICE: From a technical  
7 implementation standpoint, the law has not affected our  
8 policies or practices at the state level.

9 CHAIRMAN LUNDEEN: Jane?

10 MS. GOFF: Hi, thank you very much, all of  
11 you, for -- it's very helpful. I don't know whether  
12 these are substantive topics or whether they are the  
13 mechanical. We are kind of in the data today. We are  
14 data -- we are a big data head today. So it's your  
15 fault.

16 But thinking about -- actually, this is a  
17 good slide to have up, this will give me a little bit of  
18 an outline. Other states, and I know that it's been  
19 talked about a lot in Colorado, is the whole -- the  
20 notion of "bring your own device". And so when we're  
21 talking about expanding the tech capability and capacity  
22 in classrooms and in buildings and such as that, and it  
23 goes along with the idea of -- of Dr. Schroeder's  
24 question earlier about online ordering of materials and  
25 tools and -- and the need to be wary of what your signing



1 on for, and where it can -- where it might go, and what  
2 kinds of obligations that creates.

3 But I'm curious as to whether we've had to  
4 have that consideration so that people are aware that  
5 perhaps if a child -- a student -- brings his or her own  
6 device to some activity, how does that apply? It's an  
7 off -- it's an off "campus" so speak, machine. Piece of  
8 equipment.

9 Same thing is true -- I'm thinking about  
10 teachers who are at home and they're looking toward  
11 finding great tools and strategies and curriculum aids  
12 and lesson planning ideas and that sort of thing. If  
13 you're off the district's grid, so to speak, what are  
14 people aware of? Do we -- do we need to be thinking  
15 ahead about some training and information to provide just  
16 the teacher scene about here are the ramifications of  
17 this type of thing? In addition to at school activity  
18 that's not connected to district equipment?

19 MR. HAMMOND: Mr. Chair? Let me see if I  
20 can address that a little bit, and Dan may kind of add  
21 in, Elliot -- there's no "bring your own device" so to  
22 speak, at the state level. It's very frustrating  
23 sometimes, but you either accept our device or you don't  
24 get in. And if you do use an outside device; some of us  
25 have iPhones and others, it's only -- it enforces a



1 different encryption that you have to use, and secondly,  
2 it allows you to get into a certain part, which is very  
3 interesting and very frustrating.

4                   That is different than in a school  
5 district. And I -- my sympathy is to a school district,  
6 because as school districts get into this whole issue, it  
7 is a predominant issue of kids bringing their own devices  
8 and how do you protect around that? I can't answer that  
9 from a school perspective. Maybe Dan can, but it brings  
10 its own challenges when that happens. I know that when  
11 we were -- some of the international work that we were a  
12 part of both in Australia -- and you'll see that in India  
13 as well -- where kids are bringing their own devices in  
14 and that -- I didn't -- we had so many other questions  
15 that didn't get out, but how do you handle the security  
16 route? And I probably could ask Jeremy Felkner (ph)  
17 right now from Jeff Co and he could provide an answer  
18 immediately off the top of his head about how we're  
19 handling that in your district, but I don't want to put  
20 him on the spot. But districts are having to address  
21 that. Dan?

22                   MR. DOMAGALA: Thanks, Commissioner.  
23 Exactly right. This is a -- this is a very challenging  
24 issue for districts and I can't speak on behalf of all  
25 districts, but I -- I know just in working with my



1 colleagues around the state, there are different  
2 approaches to this. At the state level, as Commissioner  
3 Hammond mentioned, you must have a state device in order  
4 to access state systems, and that's just a hard and fast  
5 rule for us. If -- if someone is looking to access like  
6 their email system, they can use an external device as  
7 long as we provide adequate protection on that -- on that  
8 device.

9                   So there are -- there is different  
10 balancing points here and that's what -- in the  
11 technology world, we continue to struggle with. Is -- is  
12 providing the flexibility to take advantage of these  
13 innovative things, innovative devices and innovative  
14 applications. But at the same time, ensuring that there  
15 is proper security and awareness around utilizing those  
16 devices and those applications. I think it comes down to  
17 district policy. And in some cases it may be school  
18 level policy. The state can provide guidance on that, but  
19 that's as far as we're -- as far as we're going right  
20 now.

21                   MR. HAMMOND: Mr. Chair?

22                   CHAIRMAN LUNDEEN: Please, go ahead.

23                   MR. HAMMOND: At one point the district  
24 had -- we were able to have an instructional person to  
25 assist in that, and that was some time ago. We just



1 don't have the resources to know what districts are doing  
2 in that particular arena.

3 UNIDENTIFIED VOICE: (Indiscernible).

4 UNIDENTIFIED VOICE: Just to say that I  
5 think you're looking at radically different issues when  
6 you're talking about teachers and administrators bringing  
7 their own devices. Because there you have a situation  
8 where they may very well be downloading personal  
9 identifiable student information on those devices in a  
10 manner that would not be protected. It would be  
11 inconsistent with state and federal law. I think from  
12 what I've seen in terms of students bringing their own  
13 devices, you have a whole different host of issues, but  
14 those mostly tend to be of when you're looking at  
15 filtering their activity while they're at school and  
16 taking advantage of the school wi-fi. I think that  
17 should a student do school work on their own personal  
18 device, that's -- that's not going to be an educational  
19 document in the possession of the district. That's going  
20 to be in possession of the student. So you don't have  
21 some of those issues arising.

22 UNIDENTIFIED VOICE: Mr. Chair, it would  
23 be an issue, and one that I've heard that maybe talked  
24 about is the possible legislative issues come forth.

25 CHAIRMAN LUNDEEN: Right. Other



1 questions? I get to go here. Okay, so I've got kind of  
2 two buckets of questions. One is just, we're going to  
3 machine gun through these. They're -- they are in the --  
4 the kind of the State, how are we doing this, questions.  
5 And the other is more of the -- let's look into the  
6 future and around the corner question as to what does  
7 that is mean in the classroom to the students and so  
8 forth. So we'll go with the fast and easy ones first.

9 Dan, you would -- and I'm just looking for  
10 laymen's terms, laymen description here. You generally  
11 described the security that we're using at CDE as  
12 comparable to financial institution type security. Just  
13 give us a layman description of how secure it is.

14 MR. DOMAGALA: I think that's a generally  
15 true statement. We employ encryption to the best of our  
16 ability within the -- within our available resources  
17 using --

18 CHAIRMAN LUNDEEN: Now you're  
19 (indiscernible) on me here.

20 MR. DOMAGALA: -- financial transactions  
21 as a -- as a guide.

22 CHAIRMAN LUNDEEN: Within available  
23 resources sounded like a hedge there. It is -- we are as  
24 secure as what your banking information would be, or no?

25 MR. DOMAGALA: I would say we strive to be



1 as secure as the banking industry. I don't know the  
2 specifics of -- of banking security pieces. But I will  
3 say that -- well, again, we have not experienced a  
4 breach, so that's -- a track record, again, we intend to  
5 keep. Given our available resources, the point there is,  
6 you can spend an infinite amount of dollars to protect  
7 any system. You can spend a minimal amount of money to  
8 protect systems too. There's a balancing point in-  
9 between there to where a proper investment leads to a  
10 proper safeguarding, and --

11 CHAIRMAN LUNDEEN: Well, I think the no  
12 breach is a good answer. I think that that kind of gets  
13 you --

14 MR. DOMAGALA: I'll stop there.

15 CHAIRMAN LUNDEEN: Yeah, it -- we are not  
16 sloppy. So I appreciate that.

17 UNIDENTIFIED VOICE: It's a little  
18 different from the student data side.

19 CHAIRMAN LUNDEEN: I understand. And  
20 staying with Dan; the individual student data  
21 identification thresholds, you used the illustration of  
22 the one fourth grade female in aggregated data. So I'm  
23 curious what the parameters are, the thresholds are,  
24 before data becomes released and how those are  
25 established?



1 MR. DOMAGALA: The general rule is 16 as a  
2 number. Our statisticians adjust that depending on the  
3 type of report.

4 CHAIRMAN LUNDEEN: You also mentioned an  
5 internal data governance committee. Describe the  
6 composition and purview. Who does what?

7 MR. DOMAGALA: It's a data measurement  
8 committee, it's also called data governance. It consists  
9 of owners from every unit in the Department; every unit  
10 that deals with data, which is just about every unit in  
11 the Department. So there's approximately 25 members,  
12 they are meeting monthly, and they have various topics  
13 that they -- they dive into on a monthly basis and  
14 provide information to the rest of the Department around  
15 ownership and governance of information.

16 MR. HAMMOND: And ensuring that we're  
17 talking.

18 CHAIRMAN LUNDEEN: Sure, but specifically  
19 with regard to what's going on within CDE's data. This  
20 isn't something that's envisioning -- my second bucket  
21 question, looking down the road and around the corner,  
22 into what might be happening in the schools.

23 MR. DOMAGALA: So are you looking for a  
24 specific --

25 CHAIRMAN LUNDEEN: Nope.



1 MR. DOMAGALA: -- topics that we're --

2 CHAIRMAN LUNDEEN: No, yeah, I'm just  
3 curious -- you folks are thinking about keeping your shop  
4 clean, right? Okay. I guess I'm jumping over to Tony  
5 and Sally at this point. With regard to FERPA, you  
6 talked about some of the exceptions where disclosures are  
7 permitted. Expand a little bit, or explain that area and  
8 the rationale behind where those disclosures -- or the  
9 exceptions -- are allowed.

10 MS. PENNINGTON: Sure. So if I understand  
11 your question correctly, you are wanting to know a little  
12 bit more about why -- or kind of how these disclosures  
13 can be made. And basically, it comes -- it comes from  
14 this particular slide, which I do summarize, which  
15 addresses pretty much the main areas. And Tony has the  
16 particularly provision in state law, and it allows free  
17 flow of information to state officials and to schools so  
18 that information about students can be passed in a  
19 private manner.

20 MR. DYL: And let me expand about that.  
21 And first of all, I would like to preface my remarks by  
22 saying that this is literally an area where people like  
23 me do all day trainings. Or go to all day trainings.

24 CHAIRMAN LUNDEEN: To understand  
25 (indiscernible) --



1 MR. DYL: As to the parameters of all of  
2 these in federal law. That said, the main one is --

3 CHAIRMAN LUNDEEN: So summarize an all-day  
4 training into, you know, the next 30 seconds.

5 MR. DYL: In two minutes or less -- I'm  
6 getting very good at this -- the -- the main one is  
7 disclosure to other school officials who have a  
8 legitimate educational interest in that, and -- and  
9 here's the big one that I think is -- is causing a lot of  
10 consternation as it rolls out, and that includes  
11 contractors, consultants, volunteers, who have outsourced  
12 institutional services or functions that could be -- that  
13 could have been performed by the institution itself, by  
14 they've outsourced it, in which case you can get -- this  
15 is where you get the third party vendors who can get  
16 access to this if they are performing a function that the  
17 school district could -- could have performed itself.  
18 And then there is a whole list of different safeguards  
19 and conditions in FERPA intended to safeguard that  
20 information.

21 In addition, then you have disclosure to  
22 other school districts where that student seeks or  
23 intends to enroll. You have various disclosures to the  
24 federal government, or to state or local educational  
25 authorities under law. You have disclosures to



1 organizations conducting studies for or on behalf of the  
2 educational agency or institution to develop or  
3 administer tests, administer student aid programs, or  
4 improve instruction. That's another very large one when  
5 you get -- when you get to it, because a lot of what you  
6 see in both school district federal levels are various  
7 studies that involve this information that are intended  
8 to improve instruction. So we see that one a lot.

9 CHAIRMAN LUNDEEN: And that was my -- the  
10 next question I had for you, was in this space. So  
11 expand again the parameters and how that's managed when  
12 you're going to an outside organization for the purpose  
13 of a study, what are the ground rules?

14 MR. DYL: The ground rules are basically  
15 this page and the next page in the regulations. And it  
16 says you can only disclose under this if the study is  
17 conducted in manner that does not permit personal  
18 identification of parents and students by individuals  
19 other than the organization itself. The information has  
20 to be destroyed when its no longer needed. They have to  
21 enter into a written agreement --

22 CHAIRMAN LUNDEEN: Okay, so the safeguard  
23 is in place.

24 MR. DYL: Yes, there is a variety of  
25 safeguards.



1                   CHAIRMAN LUNDEEN: Okay, but that -- this  
2 is an area to me, because it falls into the second bucket  
3 looking down the road, and around the corner, I think  
4 that this is an expanding space. So it's a -- it's of  
5 serious interest.

6                   MR. DYL: And I think this is -- yeah,  
7 this is an area where Colorado as a state certainly could  
8 do what CDE has already done. CDE has taken these  
9 buckets and added additional protections that go into  
10 those contracts that we require as an organization.  
11 That's in our best practices to the district, but perhaps  
12 legislation could further define -- go beyond the minimum  
13 protections of the FERPA and say, in addition to these,  
14 these additional provisions should be required anytime  
15 you're contracting with a third party vendor, pursuant to  
16 these particular FERPA exceptions.

17                   CHAIRMAN LUNDEEN: Okay. Dr. Scheffel?  
18 And feel free to (indiscernible).

19                   MS. SCHEFFEL: So it's helpful to listen  
20 to the stipulations around the areas, and I think  
21 research is the one you most recently referenced. Here's  
22 my question: It kind of relates to your...is it your  
23 sense that Colorado would benefit from a law like  
24 Oklahoma recently passed around access accountability and  
25 transparency, given the following assumptions?



1                   And my question is: Do you agree with my  
2 assumptions, or do you have a sense that these could be  
3 handled without the law? And that is, since CDE has  
4 multiple contracts with vendors, and they are not on the  
5 website and parents can't go in there and easily figure  
6 out what fields are represented for their students, since  
7 95 percent of districts by one estimate, use Cloud-based  
8 vendors and those contracts usually aren't listed on the  
9 website either. And again, parents feel that they have a  
10 lack of clear access and a path to figure out what's out  
11 there on my child, being sold to whom under what  
12 conditions? For example, if a district has issued an  
13 email address to a student, then the students searches,  
14 for example, are often used and there is no parental  
15 consent for that. So my question is: If those  
16 assumptions are correct, would Colorado benefit from a  
17 law that really addresses those things in a targeted way?  
18 Or is it your sense that we have safeguards in place that  
19 somehow could address that? My sense is that there is so  
20 much slippage that -- that as I look at what Oklahoma is  
21 doing, that we could benefit from that, but I'm wondering  
22 what your opinion is.

23                   UNIDENTIFIED VOICE: Well, I will start  
24 and I would love my colleagues to weigh in on the  
25 Oklahoma while at least from my interpretation of it, the



1 -- a lot of what's outlined in Oklahoma law, Colorado was  
2 already doing at a state level. And the way I again,  
3 interpret the Oklahoma law, it's targeted at the state  
4 level and not at districts within the state. Which is  
5 kind of what we're talking about here. Potential  
6 legislation to carry forward at the district level to  
7 further bolster what's happening at the state level.  
8 There are pieces of the Oklahoma law, I think, would  
9 absolutely strengthen Colorado's -- Colorado's stance,  
10 again, at a state level. Because that's what Oklahoma's  
11 target is, based upon my interpretation.

12 MS. SCHEFFEL: So your sense is that it's  
13 the district level that really needs to be addressed for  
14 parents to feel comfortable that their student's  
15 information isn't being data mined by a commercial  
16 entity. Especially the vendors that have been hired by  
17 the district.

18 UNIDENTIFIED VOICE: I would concur with  
19 that, especially given that districts collect far more  
20 information at the student level than the state does.

21 CHAIRMAN LUNDEEN: Angelika? I'm sorry --

22 UNIDENTIFIED VOICE: No, Elliot first.

23 CHAIRMAN LUNDEEN: Elliot's got an  
24 amplification clarification.

25 MR. ASP: Thank you, Mr. Chair. The only



1 piece I'd add to this is, coming relatively recent from a  
2 district, I agree with Dr. Scheffel; these are -- these  
3 are major issues and without both legal resources or the  
4 experience in these kinds of contracts, it's -- it's very  
5 easy for school districts to get caught in a bind that  
6 they don't even realize they are in. And so whether or  
7 not that -- the best remedy for that is legislation or  
8 not, I'm not sure. And I'll defer to my colleagues on  
9 this, but it's an issue that needs to be addressed.

10 UNIDENTIFIED VOICE: I just want to add:  
11 In comparing -- as we're preparing for this in --  
12 comparing the Oklahoma law with Colorado State law, one  
13 thing we did notice is that both states require a data  
14 dictionary. But both -- but they are required for  
15 radically different reasons. The data dictionary in  
16 Colorado is part of a streamlined -- a system for  
17 streamlined reporting from the districts to CDE, and  
18 therefore, the data dictionary is very technical. It's  
19 really created for technical usage of districts to  
20 understand what is reported, in what format.

21 The Oklahoma one is really created for  
22 parents and the public so that they can easily understand  
23 what -- what the data reporting requirements are. So I -  
24 - that really jumped out at us when we were -- when we  
25 were comparing the two laws.



1 CHAIRMAN LUNDEEN: Angelika, did you have  
2 a --?

3 MS. SCHROEDER: Yeah, different. Going in  
4 a different direction. When students take the TCAP  
5 assessments or the recent science pilot, do they use  
6 their student IDs or their names?

7 UNIDENTIFIED VOICE: Both. Student ID  
8 primarily. But in -- in some cases, name is provided  
9 along with that too.

10 MS. SCHROEDER: And then what's sent to  
11 the state? Is the ID attached? Or both are attached?

12 UNIDENTIFIED VOICE: The ID is attached to  
13 the primary information.

14 MS. SCHROEDER: So we don't actually have  
15 names of kids, do we?

16 UNIDENTIFIED VOICE: I don't recall  
17 specifically whether names are included in the  
18 information. For the most part, my answer would be no,  
19 it's the ID only that the state receives.

20 MS. SCHROEDER: So I'm trying to figure  
21 out -- and I don't mean this factiously, I mean this  
22 genuinely; when parents are concerned about the PARCC  
23 because of the data piece, what is that they are talking  
24 about? What is the data piece that should be worrying  
25 parents and legislatures and states, that's that's a



1 reason to be against PARCC -- the assessment? It's  
2 flummoxed me, but I'm anxious to hear that.

3 UNIDENTIFIED VOICE: So again, I'll turn  
4 to my colleagues for -- for further answering the  
5 question. PARCC does not collect any information. PARCC  
6 is -- the way I understand it, PARCC is a committee  
7 around streamlining the -- the state testing process. So  
8 any information from Colorado is only shared with those  
9 testing vendors under contractual obligations.

10 MS. SCHROEDER: But the kids take the test  
11 -- not right now, but they will be taking the test,  
12 they'll have their student ID --

13 UNIDENTIFIED VOICE: That's it, right.

14 MS. SCHROEDER: So I don't get it.  
15 Because this is a reason that's being given, even at the  
16 state level, for not participating in PARCC.

17 MR. HAMMOND: Mr. Chair?

18 CHAIRMAN LUNDEEN: Commissioner, and then  
19 Dr. Scheffel.

20 MR. HAMMOND: Every state has got a  
21 different -- I think we saw that when we went with  
22 Mbloom, where I was still surprised that one state,  
23 Louisiana, collected social security numbers as part of  
24 student information. That's unheard of. Why would they  
25 -- you just don't do that. I mean, that -- but anyway,



1 that -- that said, every state is different. And what  
2 we've done here is really go through the -- there are  
3 cases -- again, Dan is such a (indiscernible), I  
4 appreciate that. Won't rule out any possibility. But on  
5 our assessment information, what's collected with PARCC,  
6 it's all at the student identifier level.

7 MS. SCHROEDER: But in other states, that  
8 may not be the case.

9 MR. HAMMOND: That's correct.

10 MS. SCHROEDER: That helps. That helps  
11 because I've just been confused.

12 MR. HAMMOND: But it's also collecting all  
13 of this information. I think where that's housed and how  
14 it's collected -- that is an issue. Like, in Colorado,  
15 we would say that has -- our information stays here, it's  
16 not to be shared or any identifiable information will  
17 never be shared with the feds. In fact, we sign on to a  
18 letter sent to the feds that, even if you're thinking  
19 about that, don't think about it, because we are not  
20 going to share it.

21 CHAIRMAN LUNDEEN: Dr. Scheffel?

22 MS. SCHEFFEL: Also, because I think  
23 people have read about the loosening of FERPA and the  
24 language and how the terms are defined in the four areas.  
25 The feds have far greater access to those data than they



1 did before 2008. So parents realize, okay, well, we have  
2 these two federal entities doing the assessments, they  
3 have access to the data in unprecedented ways because of  
4 redefinition of the terms.

5 UNIDENTIFIED VOICE: But if we don't give  
6 them personal student data, they don't get it that way,  
7 but other states may.

8 MS. SCHEFFEL: No, that's not my  
9 understanding. My understanding is that they have access  
10 to student data and because they are the entity to --

11 UNIDENTIFIED VOICE: Who does? Who are  
12 the two --

13 MS. SCHEFFEL: The feds and the Department  
14 of Ed. For four reasons.

15 UNIDENTIFIED VOICE: This department? Or  
16 the Federal Department?

17 MS. SCHEFFEL: The Federal Department?

18 UNIDENTIFIED VOICE: Does the staff -- can  
19 the staff comment on that? (Indiscernible)

20 UNIDENTIFIED VOICE: I can say that CDE  
21 provides no student level information to the Federal  
22 Government.

23 MS. SCHEFFEL: Yeah, but when PARCC kicks  
24 in and takes effect, the feds have access to those data.

25 UNIDENTIFIED VOICE: But that's just test



1 scores.

2 MS. SCHEFFEL: Yeah, but they can be  
3 linked back to student identifiers.

4 UNIDENTIFIED VOICE: Not if we don't  
5 provide them, Deb.

6 MS. SCHEFFEL: Well, that -- that, we'd  
7 have to have a (indiscernible) --

8 UNIDENTIFIED VOICE: (talking over) yeah,  
9 but you're speaking like you know the facts, and I think  
10 we need to get the facts.

11 MS. SCHEFFEL: Okay, lets get the facts.  
12 That's what I've -- that's what I've understood in my  
13 reading of it, but we can get more information.

14 UNIDENTIFIED VOICE: Mr. Chair, the only  
15 thing I'd say around that, and Deb, the (indiscernible)  
16 may be different, but we've continually said, we will not  
17 be supplying student level identifiable information.  
18 Period. It's identifiers. No one can link that back. I  
19 mean, I don't -- unless you can tell me they can. I  
20 don't know how they could. So -- but that's our  
21 statement. You know, it may be different, okay, than  
22 others.

23 MS. NEAL: So I'm way farther down the  
24 line there as everybody else. So if we were to take this  
25 test, all you would send would be the results. There



1 would be no student data -- this person had this grade,  
2 and this person got this grade.

3 UNIDENTIFIED VOICE: (Indiscernible)

4 UNIDENTIFIED VOICE: I don't believe any  
5 results are sent to the federal level. The consortium is  
6 around streamlining the testing process. The information  
7 is Colorado's and it's only through our contracted  
8 vendors.

9 CHAIRMAN LUNDEEN: Okay. So to loop this  
10 back around, I'm going to come to my question, which I  
11 think leads to where the concerns are coming from, and  
12 it's -- Kady kind of took us as we walked through the  
13 presentation, into the deeper end of the pool and then we  
14 -- next thing we knew we weren't wading anymore, we were  
15 swimming. And that's as we kind of look forward into  
16 what happens. Video being captured, things of that  
17 nature. And it's this -- this continuum of data  
18 collection that I think has people very concerned, and  
19 PARCC is one stop along the way. It may be sometimes  
20 properly and sometimes improperly used in that concern.  
21 But I think it's part of the continuum that is present in  
22 what we are doing.

23 So coming back to the question -- and I  
24 think it comes back to what you folks were talking about  
25 a little bit about the Oklahoma law. If I understood



1 properly, without parent consent, study contractors are  
2 released information. And my question is: If we  
3 consider that contractor to be a second generation --  
4 they are the second generation use of the data, is there  
5 limitation on third generation use? What -- what are  
6 they restricted to do, or able to do with that data going  
7 forward?

8 MS. LANOHA: So yes, and that's one of the  
9 restrictions. It's one of the baseline restrictions in  
10 FERPA, is that access to the data for whatever purpose  
11 you have outlined in your agreement doesn't confer the  
12 rights to use it for other purposes or -- you know,  
13 that's why you have a deadline for when the property will  
14 be destroyed. So --

15 CHAIRMAN LUNDEEN: (Talking over) Right,  
16 so although they may receive it without parent consent,  
17 there's -- there's some fences around what they can do  
18 with that data and how they use it. And it would be --  
19 would that be personally identifiable data that moves at  
20 that level?

21 MS. LANOHA: So I think the term "study"  
22 is a little bit confusing when we talk about the pure  
23 research from outside third party (indiscernible) about  
24 how they want to use the data. That -- that information  
25 has to be de-identified before we share it. But when we



1 authorize a vendor to do a study on our behalf, so it's a  
2 question we're asking, then we can share personally  
3 identifiable student information, but that's when we have  
4 all of those restrictions in place.

5 CHAIRMAN LUNDEEN: Excellent.

6 UNIDENTIFIED VOICE: I think we have to  
7 make the distinction between a study, as in going through  
8 an institutional review board for research in the  
9 university, and data shared with vendors, because they're  
10 doing the work for us on our behalf, right? And that is  
11 personally identifiable, correct? And PARCC is one of  
12 the vendors, so I mean, I --

13 UNIDENTIFIED VOICE: But not with a  
14 student name. Not a student --

15 UNIDENTIFIED VOICE: Student identifiers.

16 UNIDENTIFIED VOICE: Student identifiers,  
17 not a student name. No one is going to show up at a  
18 front door, looking for Suzy.

19 MR. HAMMOND: Just to help clarify one  
20 thing when it comes to PARCC, whatever. Each state, even  
21 though there's PARCC, will have a contract just like we  
22 do now with Pearson. Separate vendor. It will be no  
23 different than what we're doing now. Then we aggregate  
24 that information from -- as a state. We're not sitting  
25 on it all out here. We still are responsible as a state



1 for our privacy and to keep that non-identifiable.

2 CHAIRMAN LUNDEEN: So with the limited  
3 time we have available -- Dr. Scheffel, go ahead.

4 MS. SCHEFFEL: I apologize. Let me ask a  
5 really detailed question then. If you look at one of the  
6 assessments for the READ Act, one of the reasons for the  
7 specific assessments is so that we can tie that data to  
8 student instructional decisions, and teachers look at  
9 that information and it's stored in a Cloud, using a  
10 vendor, so that teachers for a legitimate purpose of  
11 saying, here's my class list of 30 kids, I'm putting them  
12 in three groups for those that are strategic or  
13 benchmarked or whatever, and I'm going to link  
14 instructional decisions to that. That's a legitimate use  
15 by the teacher, but it's also stored in a Cloud by the  
16 vendor.

17 And the question is: What is the privacy  
18 around that? And to say it's not linked to student name  
19 is inaccurate; it is. I mean, in that case. I'm not  
20 going to name a vendor right now, but I'm just saying  
21 I've looked at the student names. So I'm just saying  
22 that's what the public is concerned about. How do we  
23 safeguard that?

24 UNIDENTIFIED VOICE: Can't that be stored  
25 by number?



1 MS. SCHEFFEL: I'm just saying the vendor  
2 doesn't store it by number.

3 CHAIRMAN LUNDEEN: Absolutely, and that's  
4 where I'm trying -- this is the down the road and around  
5 the corner question that I keep trying to get to and  
6 it's, what's going on as we're getting in the deeper end  
7 of the pool here? You know, we are talking about getting  
8 guidance to districts. We've had a case where a district  
9 came in, interacting with a vendor in a way that made  
10 parents very uncomfortable. And so what -- what is --  
11 that future look like? What is the son of Mbloom that  
12 may be rising up right now? That may be being developed?  
13 Simply because it does provide a valuable educational,  
14 you know, teaching benefit that then presents a data -- a  
15 set of data collection -- data capture, data security,  
16 then data destruction timeframe questions. And -- and  
17 where is that -- that guidance being developed if -- and  
18 is it beyond guidance that we need to be doing? So kind  
19 of coming back to some specific questions.

20 You know, you mentioned district data  
21 guidance. How robust is that? What does it speak to?  
22 And maybe to inform them -- I jump down to my, you know,  
23 broader question, what are -- where are we seeing  
24 educator interest right now? In collecting data. How is  
25 it being captured, used, stored, secured, and when



1 destroyed? So all of these questions we would ask, and  
2 we are doing, I think, a very good job at the state level  
3 of managing and protecting our data. At the -- at the  
4 district level and the classroom level, if we have -- the  
5 folks I love; entrepreneurial educators seeing a --  
6 something that says, hey, if I capture this data and  
7 track my student longitudinally, whether it's in an Excel  
8 spreadsheet or something more sophisticated, oh, there's  
9 this app now that provides me an ability to do that. I  
10 want to do that.

11 How is that being managed? That is the  
12 down the road and around the corner question. And -- and  
13 how are we addressing that to inform the policies that  
14 should be shaped? I know that's a huge, broad question,  
15 but please --

16 UNIDENTIFIED VOICE: I'll start, thank  
17 you, Mr. Chair. And turn it over to my colleagues as  
18 well. Some of that comes back to a couple of pieces.  
19 One has to do with our guidance being based on our  
20 policies now. And so the guidance we've giving to  
21 districts are asking them to be at the same level at  
22 least as the Department, and we may need to change that  
23 guidance in leu of the questions that you asked here.

24 Another piece is providing what some of  
25 you have already talked about, and that's real --



1 probably additional help and support in looking at the  
2 contracts that districts would have with -- or schools  
3 would have with a -- a provider of these services. And  
4 also I think Dr. Schroeder talked about it earlier, the  
5 kind of training we might even make available to local  
6 education agencies or even teachers about what they're  
7 actually getting themselves into when they use these  
8 particular products and -- and they're not thinking about  
9 this. Or even if they create an Excel spreadsheet and  
10 then they export that off to somebody to do some analysis  
11 with -- I think people are -- are operating in a -- in a  
12 -- and I read into your comment in good faith in trying  
13 to do things for kids that I think are helpful and these  
14 things are helping them automate these processes that are  
15 hard to do.

16 On the other hand, I don't think they  
17 realize what they could conceivably get themselves into  
18 and how they might reveal information that they are not -  
19 - that they don't intend to. So we need to provide  
20 additional support to --

21 CHAIRMAN LUNDEEN: Yeah, you get one of  
22 several BINGOS that I've been looking for today. It's  
23 the -- it's the -- the fact that as you said in your  
24 opening framing comments -- we've stepped through the  
25 looking glass, data is different today; it's immediately



1 transportable. And it's -- therefore there is more at  
2 risk. And as people are trying to do the right things,  
3 how are we protecting that?

4 So how do we then -- if there's a number  
5 of places where this conversation is happening -- I  
6 presume it's happening to greater, lesser extents -- I  
7 suspect lesser extents at 178 school districts. It's  
8 happening potentially across the street in the  
9 legislatures. But I'm saying, how can we be helpful to  
10 that conversation?

11 UNIDENTIFIED VOICE: My suggestion would  
12 be to provide some mandates to the vendors. So we can  
13 provide guidance to districts, maybe we can create a  
14 state-approved list of vendors that we believe are  
15 protecting student information properly and according to  
16 -- to our state guidelines. The other -- the vendor  
17 equation of this is, I think, a powerful one. And I  
18 think there is opportunities there to guide the vendors  
19 on what our expectations are at the state level and also  
20 what -- how we expect those interactions to happen at a  
21 school and district level.

22 UNIDENTIFIED VOICE: Mr. Chair?

23 CHAIRMAN LUNDEEN: Absolutely; go ahead.

24 UNIDENTIFIED VOICE: It still presents a  
25 problem for us in the resources. There could be 101



1 vendors out there that we'd never have knowledge of, that  
2 districts enter into agreements with. And I think Dr.  
3 Scheffel's comments around a couple of these things --  
4 you know, when you pass laws, you pass laws and you  
5 collect data. READ Act, et cetera, et cetera.  
6 Especially the information from (indiscernible) on the  
7 early readiness assessment. That's at a local level. I  
8 mean, we may collect -- because each of these have  
9 different collections -- we may collect in the aggregate,  
10 alright, but it really falls on that district and  
11 sometimes I think now in this day and age, people have to  
12 ask the question, when they pass the law, okay, if we're  
13 going to have another data collection, how that data  
14 collection, especially at the local level, how is that  
15 going to be protected? And that also carries a fiscal  
16 impact at the local level. They may not have the ability  
17 to do that; you would think they would. And districts are  
18 all over the place.

19 CHAIRMAN LUNDEEN: So at the very least,  
20 you know, we can try to make this conversation a high  
21 value conversation, to the extent we can identify things  
22 and share that information out. At least people can be  
23 aware, if we can shine the light on some things that  
24 people need to be aware of, you know, downloading apps  
25 for the benefit of your students may make sense if it's



1 held within some certain parameters and what do those  
2 parameters look like? But at least cause people to stop,  
3 pause and think about it before they move forward.

4 So with that, I'd love to give people in  
5 the public an opportunity to ask a couple questions if  
6 they'd want. Do we have any final questions? Because I  
7 feel as if I've consumed -- yeah, Vice Chair?

8 MS. NEAL: (Indiscernible) teacher  
9 perspective, because (indiscernible - not mic'ed). It  
10 was valuable information and I (indiscernible) if the  
11 teacher can access that information (indiscernible) and I  
12 don't -- it's a balance; I perfectly understand the  
13 importance. But if we get so technical that nobody can  
14 look at that information, then what -- what are we doing?  
15 What goal (indiscernible)?

16 CHAIRMAN LUNDEEN: And I lied, I've got --  
17 I'm going to throw a comment out -- two comments,  
18 actually. One is the question of parent opt-out versus  
19 parent opt-in, you know, where can we -- how can we  
20 guide? How can we get the maximum freedom and protection  
21 to parents, to -- to choose to be participating in  
22 something, as opposed to having to back out of something?  
23 Again, it's a comment of simply, please, can we be  
24 sensitive to this? And I'm saying that into that ether.  
25 That's for everybody to think about.



1                                   And -- and the other is for us perhaps.  
2       It's the difference between a data dictionary and a data  
3       glossary. It's the difference between the Colorado  
4       approach as is now, and the Oklahoma -- I think it was  
5       Oklahoma, you said, Tony, where it's actually intended to  
6       help the public understand what this is all about. So if  
7       -- if we could figure out a way to try and move in that  
8       direction, I think that would -- would be helpful as  
9       well.

10                                  And so with those comments, I will say,  
11       unless we have further questions, we've got a nine minute  
12       window here. If anyone would like to step to the podium,  
13       ask a question, we'd love to have you speak. Please --  
14       gee, you're unfamiliar with this room, aren't you?  
15       Please limit yourself not to a statement, but to a  
16       question. And if you have to frame the question, that's  
17       fine. But no five minute framings. And I'm not saying  
18       that simply because you're at the microphone. I would  
19       have said that no matter who stepped to the microphone.  
20       So please.

21                                  AUDIENCE MEMBER: I actually do have a  
22       question. One of the criticisms of FERPA that I've heard  
23       is that school officials are -- it's limited to school  
24       officials. And some people have said that that could  
25       include volunteers. So do we have in our -- our



1 guidance, or whatever, a very strict definition of who  
2 the school officials are that have access to this  
3 information?

4 CHAIRMAN LUNDEEN: Good question.

5 UNIDENTIFIED VOICE: Actually, the  
6 contractor exception that I had mentioned previously does  
7 specifically include volunteer. And that was done  
8 pursuant actually to a United States Supreme Court case  
9 that involved a -- I believe it was a school district  
10 that had parent volunteers grading papers, and whether or  
11 not that was FERPA violation. This was in response to  
12 that. But I do not know off-hand if there is any  
13 particular definition of the term "volunteer".

14 UNIDENTIFIED VOICE: So would you say  
15 that's an exemption from FERPA, or --

16 UNIDENTIFIED VOICE: It wasn't clear on --

17 UNIDENTIFIED VOICE: It wasn't clear for  
18 me.

19 UNIDENTIFIED VOICE: It's part of -- it  
20 basically -- FERPA says that you can disclose personally  
21 identifiable student information to other school  
22 officials who have a legitimate educational interest.  
23 And then it says that you can also treat as other school  
24 officials -- contractors, volunteers, who are performing  
25 a service or duty that could otherwise have been



1 performed by school officials. And then it has a list of  
2 protections for when you do that. But that does  
3 specifically include volunteers.

4 AUDIENCE MEMBER: And the court case  
5 upheld that?

6 UNIDENTIFIED VOICE: I'm trying to  
7 remember. It's been -- it's been quite some time now.  
8 This may have been in response to the -- I honestly don't  
9 remember. This may have changed -- it may have changed  
10 in response to the court case, saying you couldn't do it.

11 UNIDENTIFIED VOICE: What are the  
12 protections --

13 UNIDENTIFIED VOICE: I honestly don't  
14 remember.

15 UNIDENTIFIED VOICE: What are the  
16 protections, please, Tony?

17 UNIDENTIFIED VOICE: Can you  
18 (indiscernible)?

19 UNIDENTIFIED VOICE: Unless you've got to  
20 go to some mega book.

21 UNIDENTIFIED VOICE: Let some people ask a  
22 question.

23 UNIDENTIFIED VOICE: Oh, just glasses,  
24 thank you.

25 UNIDENTIFIED VOICE: They have to be under



1 the direct control of the school district, with respect  
2 to use and maintenance of the records and then they are  
3 subject to the requirements that it refers back to, I  
4 think to another section governing re-disclosure.  
5 Basically saying you can't re-disclose them.

6 UNIDENTIFIED VOICE: So you do have to  
7 train them? Or does it say that? I mean, they -- they  
8 need to understand what the FERPA rules are in terms of  
9 disclosures.

10 UNIDENTIFIED VOICE: Well, you know, I  
11 don't believe that training is in FERPA, but that might  
12 be an area where state law or policy could put something  
13 into effect there that would address that. Just because  
14 I'm not seeing anything here, mentioning training.

15 CHAIRMAN LUNDEEN: If you would please  
16 state your name and where you're from, and if you  
17 represent an organization and should choose to tell us,  
18 we'd be glad to know that.

19 AUDIENCE MEMBER: Okay. My name is  
20 Jennifer Butts; I'm a mom from Jefferson County and I've  
21 had a lot of opportunity to see a couple of actionable,  
22 measurable implementation of what's been described here  
23 today as policy, and I have some questions regarding  
24 that.

25 The first of which is, I've seen two



1 efforts where your team here has provided a verification  
2 or a menu or certification -- I'm not sure how we would  
3 look at it, but where you guys selected a vendor and ran  
4 a request for information, or request for proposal,  
5 engaged in acquisitions, meaning you paid them, and  
6 created a pre-vetted list of vendors who are approved to  
7 provide a service -- one being TS Gold, one being Mbloom.  
8 TS Gold --

9 CHAIRMAN LUNDEEN: And your question?  
10 Speak up a little bit, and your question is --?

11 AUDIENCE MEMBER: So the TS Gold  
12 opportunity, when I look at all the evidence that I can  
13 measure and identify, I do not see in your contract  
14 request for information or any activity you've done where  
15 you have identified a quality assurance plan at minimum  
16 for you, because you did enter a contract with them.

17 I do not see a data ownership minimum  
18 where you are saying this data is ours and if we choose a  
19 new vendor later on, you will migrate it as such a point  
20 as this, and you will delete it forensically from your  
21 systems. I do not see requirements for the transfer --  
22 how quickly it must happen, how reliably it must happen,  
23 and to what measurement.

24 I do not see a software assurance minimum,  
25 which is something common in software procurement. A



1 software assurance minimum is something that your vendor  
2 should be replying to you with measurements and metrics  
3 to give you confidence that their product is reasonably  
4 secure.

5 I do not see any delineation about  
6 specific EULAs for your state, district or anywhere down  
7 the line, which gets to a bigger problem about --

8 CHAIRMAN LUNDEEN: So turn this into a  
9 broad question, so I can be fair to everyone.

10 AUDIENCE MEMBER: So I would like to know,  
11 based on the policy I heard described here today, why you  
12 didn't apply those parameters to your own process?

13 CHAIRMAN LUNDEEN: Do we -- do we want to  
14 engage that? This is -- we're kind of in unusual  
15 territory here. I know we don't normally engage, this is  
16 quasi-public comments.

17 UNIDENTIFIED VOICE: I think we should --  
18 I think we should respond so we know too.

19 CHAIRMAN LUNDEEN: Please.

20 UNIDENTIFIED VOICE: Dan?

21 MR. DOMAGALA: That would be a question  
22 for our procurement director. I don't know the specifics  
23 of that contract and I don't know if any of those have  
24 been addressed or not addressed.

25 CHAIRMAN LUNDEEN: So then the -- the



1 answer at this point is, we will get an answer in. We  
2 will get an answer, okay? So --

3 AUDIENCE MEMBER: Did today say -- did you  
4 guys say today that your policies -- we're safe here,  
5 we're not violated or breached? Don't trickle to your  
6 contracts?

7 CHAIRMAN LUNDEEN: Well, and that's the  
8 broader question that I would follow up with, which is,  
9 if we failed in this, what we discussed today, we're  
10 clearly not doing. Where's the breakdown on that?

11 So I -- I appreciate your question, and I  
12 will follow up with additional follow up questions  
13 myself.

14 UNIDENTIFIED VOICE: And the other  
15 question is, is this a state contract with Gold? Or are  
16 the contracts themselves actually with the districts?

17 UNIDENTIFIED VOICE: The districts.

18 UNIDENTIFIED VOICE: You just recommended  
19 the vendor?

20 UNIDENTIFIED VOICE: My understanding is  
21 that the contracts are at a local level.

22 UNIDENTIFIED VOICE: That's my  
23 understanding also.

24 UNIDENTIFIED VOICE: Yeah, that's why --  
25 if it's with -- yeah -- (indiscernible -- speaking over



1 each other) If it's with IT, we would know that. So I  
2 have a feeling the question -- that's at the local level.  
3 We may advise a contract; I'm hearing from the folks who  
4 do that. No, it's not a state contract.

5 CHAIRMAN LUNDEEN: So but --

6 AUDIENCE MEMBER: But you've signed -- you  
7 signed a partnership. I mean, there's two documents that  
8 have your signature for services from them -- training  
9 and other things.

10 UNIDENTIFIED VOICE: That's fine, but we  
11 didn't enter into a contract with them, that's at the  
12 district level.

13 CHAIRMAN LUNDEEN: But this points out,  
14 quite frankly, the question that we were getting to  
15 towards the end of the discussion, and that is this gap  
16 between state level activity and district level activity  
17 and the guidance, the conversation, the information  
18 around that.

19 I think this is a real world example of  
20 where there is a gap in this -- you know, this in the  
21 Cloud new world that we're talking about.

22 Next question?

23 AUDIENCE MEMBER: Sunny Flynn; Mom from  
24 Jeff Co. I have a five year old and a two year old;  
25 heavily invested in this conversation. I also work in



1 high tech, I'm very comfortable with Cloud-based  
2 technology. I sell it and support it every day.

3 I could talk for a very long time --

4 UNIDENTIFIED VOICE: Question, question?

5 CHAIRMAN LUNDEEN: I have the gavel.

6 AUDIENCE MEMBER: And here is my question:  
7 With the Colorado P through 20 state longitudinal data  
8 system, the documentation on the Colorado Department of  
9 Education talks about how our children will be given a  
10 state ID that will be linking the data collected on --  
11 from multiple agencies and also clearly talks about how  
12 you will be creating consortiums across states and in my  
13 mind, though you say you won't be sending information to  
14 the Federal Government, you are creating a defacto  
15 national database.

16 CHAIRMAN LUNDEEN: Question?

17 AUDIENCE MEMBER: Is that true?

18 UNIDENTIFIED VOICE: Dan?

19 MR. DOMAGALA: No, that's not true, we are  
20 not creating a state -- or we are not creating a national  
21 database.

22 AUDIENCE MEMBER: Is it true though that  
23 in the documentation on the Colorado Department of  
24 Education website, you talk about linking information  
25 collected, P through 20, so from four years old through



1 26, across agencies and creating consortiums across  
2 states?

3 MR. DOMAGALA: The statewide longitudinal  
4 data system grant program that you're referring to, part  
5 of the goals of that is to longitudinally connect  
6 information on students beyond the K-12 space that CDE  
7 operates in.

8 So in example that would be for those  
9 students who go into post-secondary in Colorado. Linking  
10 that post-secondary information to existing P-12  
11 information to determine things like remediation.

12 So that's -- that's part of the linking of  
13 information, it's not creating a repository of -- of  
14 combined information, but it's connecting the existing  
15 secure data sources between two different agencies, in  
16 this case the agency of Department of Higher Education  
17 and the Department of Education.

18 UNIDENTIFIED VOICE: This is online by  
19 statute.

20 AUDIENCE MEMBER: I would just say --

21 CHAIRMAN LUNDEEN: Okay, so we have one  
22 more person who would like to ask a question, let's give  
23 them an opportunity to ask their question.

24 AUDIENCE MEMBER: Hi, thank you, my name  
25 is Rachel Strickland, I'm also from Jeff Co and I just



1 want to thank you all today for having this very  
2 important question, and I encourage you to look  
3 thoughtfully and carefully at any proposed legislation  
4 that might come up this session in regards to privacy.

5 My one question would be in regards to the  
6 -- the PARCC contract that the State of Colorado has. I  
7 heard for instance Mr. Domagala -- I apologize if I'm  
8 saying that incorrectly -- mention that there was in some  
9 cases in the standardized tests that student names,  
10 and/or student numbers were collected during these tests.

11 And I'm wondering if there is a contract  
12 that we can look at between the State of Colorado and the  
13 PARCC consortium to see exactly what data fields, and  
14 which -- which identifiers will or will not be sent.

15 UNIDENTIFIED VOICE: So again, the  
16 contract that the CDE has is with the vendor, in this  
17 case it's Pearson, and not with the PARCC consortium.

18 AUDIENCE MEMBER: The PARCC consortium has  
19 a contract with the Federal Department of Education  
20 though that says, or at least it used to, it had language  
21 in it that they were going to -- anybody participating in  
22 the consortium would be sending all student  
23 identification -- student identified information to the  
24 Federal Government, so I'm wondering if that extends down  
25 to the states too?



1 UNIDENTIFIED VOICE: No, not that I know  
2 of. I haven't heard that.

3 AUDIENCE MEMBER: Is that in a contract  
4 anywhere that the State of Colorado would not be  
5 participating in that part of the -- the consortium.

6 UNIDENTIFIED VOICE: You asked the  
7 question, I just don't know right now, I will find out  
8 for you.

9 AUDIENCE MEMBER: Oh, okay.

10 CHAIRMAN LUNDEEN: Okay, so we can get  
11 answer to that?

12 UNIDENTIFIED VOICE: Uh huh.

13 CHAIRMAN LUNDEEN: All right.

14 AUDIENCE MEMBER: Great, thank you very  
15 much.

16 CHAIRMAN LUNDEEN: Thanks for the  
17 question, thank you all. So this has been informative.  
18 You know, as we said in the introductory comments, this  
19 is important and I think at least three, four times  
20 during the conversation, the idea of down the road and  
21 around the corner, I think there's a lot of that in front  
22 of us, and this gap between state and districts where we  
23 can provide guidance and help to get ahead of some of  
24 these questions, instead of behind them would be useful.

25 So thank you very much. There being no



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1 further business before the Board at this time. I will  
2 put us into recess until our next regularly scheduled  
3 meeting. Thank you very much.

4 (Meeting adjourned)

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C E R T I F I C A T E

I, Kimberly C. McCright, Certified Vendor and Notary, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of May, 2019.

/s/ Kimberly C. McCright  
Kimberly C. McCright  
Certified Vendor and Notary Public

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