

COLORADO STATE BOARD OF EDUCATION

TITLE: Contractor Data Breach Policy

Originators: Jill Stacey, Data Privacy Analyst	Reviewer: Marcia Bohannon, Chief Information Officer	Approver: State Board of Education
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1. Overview

- 1.1. The Colorado Department of Education (“CDE”) is required to collect, maintain, use, and store student personally identifiable information. In fulfillment of CDE’s requirements, CDE may transfer student personally identifiable information to contractors who perform services for CDE.
- 1.2. CDE places contractual obligations on its contractors to protect all student personally identifiable information that they collect, store, maintain, and use.
- 1.3. Colorado’s Student Data Transparency and Security Act (C.R.S. 22-16-101 *et.seq.*) requires CDE to put in place a policy approved by the State Board of Education (“State Board”) to respond to any material breach of the contract that results in the loss or unauthorized use of student personally identifiable information.
- 1.4. In the case of a material breach, the Colorado’s Student Data Transparency and Security Act requires the State Board to hold a hearing and after that hearing, make a determination of whether to instruct CDE to terminate the contract with the contractor.

2. Definitions

- 2.1. “Contractor” includes any individual or entity, aside from a Local Education Provider, who receives or has access to Student PII from CDE.
- 2.2. “Loss” includes an accidental or deliberate event that results in Student PII being available to parties who are not authorized to view it or used in an unauthorized manner and where the Student PII is not retrievable or destroyed.
- 2.3. “Material Breach” is an action that violates the terms of the contract between a Contractor and CDE that results in the Loss or Unauthorized Use of Student PII.
- 2.4. “Student Personally Identifiable Information (Student PII)” includes, but is not limited to, information that is collected, maintained, generated, or inferred and that, alone or in combination, personally identifies an individual student or the student’s parent or family.
- 2.5. “Subcontractor” means any third party engaged by the Contractor to aid in performance of Contractor’s obligations to CDE and has access to CDE’s Student Personally Identifiable Information.
- 2.6. “Unauthorized Use” involves any action taken by an individual who uses Student PII in a way that is not allowed or permitted by CDE; by a local education provider; by the affected student’s parent or legal guardian; by the affected student, provided that the student is over the age of 18; or by a Contractor, as permitted by CDE’s contract with that Contractor.

3. Contractual Requirements

- 3.1. CDE shall include in all contracts involving access to Student PII with Contractors a requirement to notify CDE of any potential, suspected, or actual Material Breach that impacted the Contractor or one of the Contractor's Subcontractors.

4. Investigation, Notification and Remediation

- 4.1. Upon notice of a possible Material Breach, CDE will promptly investigate the report to determine if a Material Breach has actually occurred.
- 4.2. If a Material Breach has occurred, CDE will do the following:
 - 4.2.1. CDE will immediately work with the Contractor to ensure that the Material Breach has been contained and that no additional Student PII is at risk.
 - 4.2.2. CDE will work with the Contractor to determine the facts of the Material Breach, the number of students impacted, the number of LEAs impacted (if applicable), what specific PII was affected, and other necessary information needed to determine the scope of the Material Breach.
 - 4.2.3. CDE's Chief Information Officer ("CIO") will inform the Commissioner of Education who will notify the State Board of Education. The CIO will provide the Commissioner and the State Board with any confirmed information about the nature of the Material Breach.
 - 4.2.4. CDE's CIO, in consultation with the Commissioner and, if needed, the Attorney General's Office, will determine what notification will be given to the impacted LEAs, students, and/or parents. That notification will be given as soon as possible once the facts of the Material Breach have been ascertained.
 - 4.2.5. CDE will work with the Attorney General's Office to determine if there are any other legal remedies that need to take place.

5. Hearing

- 5.1. A State Board hearing will be scheduled as soon as practicable after the State Board has been informed of the Material Breach. This hearing can be held either at a regular Board meeting or at a special meeting.
- 5.2. The State Board office will inform the Contractor of the hearing date and time and provide them with an opportunity to send a representative to attend the hearing or submit a written response to the State Board. Any written response must be submitted to the State Board, the Commissioner, and the Chief Information Officer no later than seven (7) days prior to the scheduled hearing.
- 5.3. The hearing will proceed as follows:
 - 5.3.1. CDE will provide the State Board with an overview of the circumstances of the Material Breach. This will include a review of the findings of the investigation.
 - 5.3.2. If the Contractor is not in attendance at the meeting, CDE will summarize the response from the Contractor, if any.
 - 5.3.3. If the Contractor is in attendance, the Contractor shall have a maximum of thirty (30) minutes to present.
 - 5.3.4. CDE and the Contractor will answer the State Board's questions related to the Material Breach.

5.3.5. The public will have the opportunity to testify before the State Board regarding the Material Breach, in accordance with the State Board's policy on public participation at State Board meetings. Each member of the public will have no longer than three (3) minutes to speak. The public testimony portion of the hearing will last for thirty (30) minutes. The State Board may extend the time of public testimony longer than 30 minutes at the discretion of the State Board.

5.3.6. After public testimony, CDE will have no longer than thirty (30) minutes to provide the State Board with any additional information relevant to continuing or terminating the contract, including, but not limited to, the circumstances of the contract, the number of other Contractors that can perform the same services, and whether the services being provided are legally required.

5.3.7. By majority vote, the State Board will decide whether to direct CDE to continue or terminate the contract with the Contractor.

5.4. A public record shall be kept of the hearing.

6. Termination or Continuation

6.1. If CDE is directed to terminate the contract, CDE will find an alternative provider of the services and then terminate the contract as directed by the contract.

6.2. If CDE is directed to continue the contract, CDE will work with the Contractor to establish procedures to reduce the likelihood of another Material Breach and revise the contract with the Contractor, if needed.