



COLORADO
Department of Education

Colorado's Data Privacy Law

September 29, 2017

Overview

- Colorado's Student Data Transparency and Security Act (C.R.S. 22-16-101 *et.al.*) was signed into law in June, 2016
- Adds to existing laws pertaining to the collection, management, storage, and sharing of Student Personally Identifiable Information (PII)
- The purpose of this law is to increase transparency and security of all Student PII that CDE and Local Education Providers (LEPs) collect and maintain
- Law places new restraints on service providers and places obligations for contracts with these providers
- The law is relatively new and there are still questions on what the law means and how to comply

The following is not to be construed as legal advice or a formal legal opinion. You should consult with your legal staff before making any decisions based on this or any other legal matter.

Key Definitions – Student PII

"Student Personally Identifiable Information" (PII) means information that, alone or in combination, personally identifies an individual student or the student's parent or family, and that is collected, maintained, generated, or inferred by a Public Education Entity, either directly or through a School Service, or by a School Service Contract Provider or School Service On-Demand Provider.

- This definition is more broad than FERPA's definition
- "Alone or in combination" means that not just name, SASID, and etc. are PII but any information that is specific enough to identify an individual student
- For example, both of these are PII:
 - Jill Stacey is directly identifiable
 - A white female who is CDE's data privacy analyst is indirectly identifiable

Key Definitions – School Service

"School Service" means an internet website, online service, online application, or mobile application that:

- is designed and marketed primarily for use in a preschool, elementary school, or secondary school;
- is used at the direction of teachers or other employees of a LEP; and
- collects, maintains, or uses Student PII.

"School Service" does not include an internet website, online service, online application, or mobile application that is designed and marketed for use by individuals or entities generally, even if it is also marketed to a United States preschool, elementary school, or secondary school.

- This definition does not include all your vendors
- This law does not apply to any vendors who are not providing a School Service
- However, treating all vendors with access to PII the same is a best practice

Key Definitions – School Service Providers

"School Service On-Demand Provider" or "On-Demand Provider" means an entity, other than a Public Education Entity, that provides a School Service on occasion to a Public Education Entity, subject to agreement by the Public Education Entity, or an employee of the Public Education Entity, to standard, non-negotiable terms and conditions of service established by the providing entity.



"School Service Contract Provider" or "Contract Provider" means an entity, other than a Public Education Entity or an Institution of Higher Education, that enters into a formal, negotiated contract with a Public Education Entity to provide a School Service.

Timelines for Required Tasks

- **August 10, 2016** - LEPs must update any contracts with Contract Providers entered into or renewed after this date
- **December 31, 2017** - Each LEP shall adopt a Student Information Privacy and Protection Policy
- **July 1, 2018** - Each LEP that is a Small Rural School District shall adopt a Student Information Privacy and Protection Policy

The additional time for small rurals only applies to the privacy policy

All other tasks in the law have no specific due date, but you should be working towards compliance

* A Small Rural School District is defined as a school district that the Department identifies as rural, based on the geographic size of the school district and the distance of the school district from the nearest large, urbanized area, and that enrolls fewer than one thousand students in kindergarten through twelfth grade.

Contracts with School Service Contract Providers

- Contracts with School Service Contract Providers entered into or renewed after August 10, 2016 must include law's requirements



CDE has a [sample LEP contract template](#)

- Contract Providers must:
 - Post on their website information explaining the PII they collect and how that data is used and shared and also provide this information to the LEP
 - Provide notice before making material changes to its privacy policy
 - Provide access to and correction of any factually inaccurate information
 - Notify the LEP of any material breach of the contract by them or by their subcontractors that results in the misuse or unauthorized access to PII
 - Maintain a comprehensive information security program
 - Destroy PII upon request or upon the termination of the contract according to the timelines established by the contract or when PII is no longer needed

Providers Obligations cont.

- Contract Providers cannot:
 - Sell PII
 - Use PII for the purposes of targeted advertising
 - Use PII to create a personal profile of the student outside of the requirements of the contract
- A Contract Provider can only share PII with a subcontractor provided that they contractually obligate the subcontractor to comply with the requirements of this law
- A Provider can only collect, use, or share PII for the purposes stated in the contract

Breaches by School Service Contract Providers

- If a Contract Provider commits a material breach of the contract that involves the misuse or unauthorized release of PII, the LEP shall determine whether to terminate the contract
- This decision will be made in accordance with a policy adopted by the governing body of the LEP
- At a minimum, the policy must require the LEP's governing body to hold a public hearing (within a reasonable amount of time) that includes discussion of:
 - The nature of the material breach
 - The Contract Provider's response to the breach
 - Public testimony
 - A decision as to whether to direct the LEP to terminate or continue the contract

CASB has a sample Contract Provider breach policy



Transparency in Data Collection

- Post on your website clear information explaining the PII you collect and maintain and how you use and share PII 

LEPs do not need to include in their list the PII sent to CDE but must post a link to [CDE's data dictionary](#)

- Post a list of the School Service Contract Providers used and a copy of each contract 

For vendors that CDE contracts with for LEPs (Pearson, Amplify, etc.), they are covered by CDE's contract terms and LEPs can [link to our contracts](#)

- Post a list of the On-Demand Providers used and update it at the start and middle of each school year
- You will need to assist a parent in obtaining the data privacy policy of a On-Demand Provider upon request 

Some districts link to the privacy policy in their list of On-Demand Providers

Non-Compliance by On-Demand Providers

- A parent can provide you with evidence that an On-Demand Provider is not complying with their privacy policy or the law
 - Specifically, the On-Demand Providers cannot:
 - Sell PII
 - Use or share PII for targeted advertising to students
 - Use SPII to create a personal profile of the student (other than for the purposes of the contract)
 - The On-Demand Provider must maintain a comprehensive information security program
- LEP is strongly encouraged to cease using the On-Demand Provider
- You must notify the On-Demand Provider that you are ceasing to use them and they can submit a written response
- You will need to post a list of these On-Demand Providers and the written responses
- You must send this information to CDE and we will also post this information
- You must also post a notice on your website to On-Demand Providers explaining this process

CDE's [On-Demand Provider Transparency](#) page



Privacy and Protection Policy

- LEPs shall adopt a Student Information Privacy and Protection Policy
- A LEP that is a Small Rural School District* has additional time to comply with this specific obligation
- Each LEP shall provide copies of the Student Information Privacy and Protection Policy to parents and shall post the policy on its website

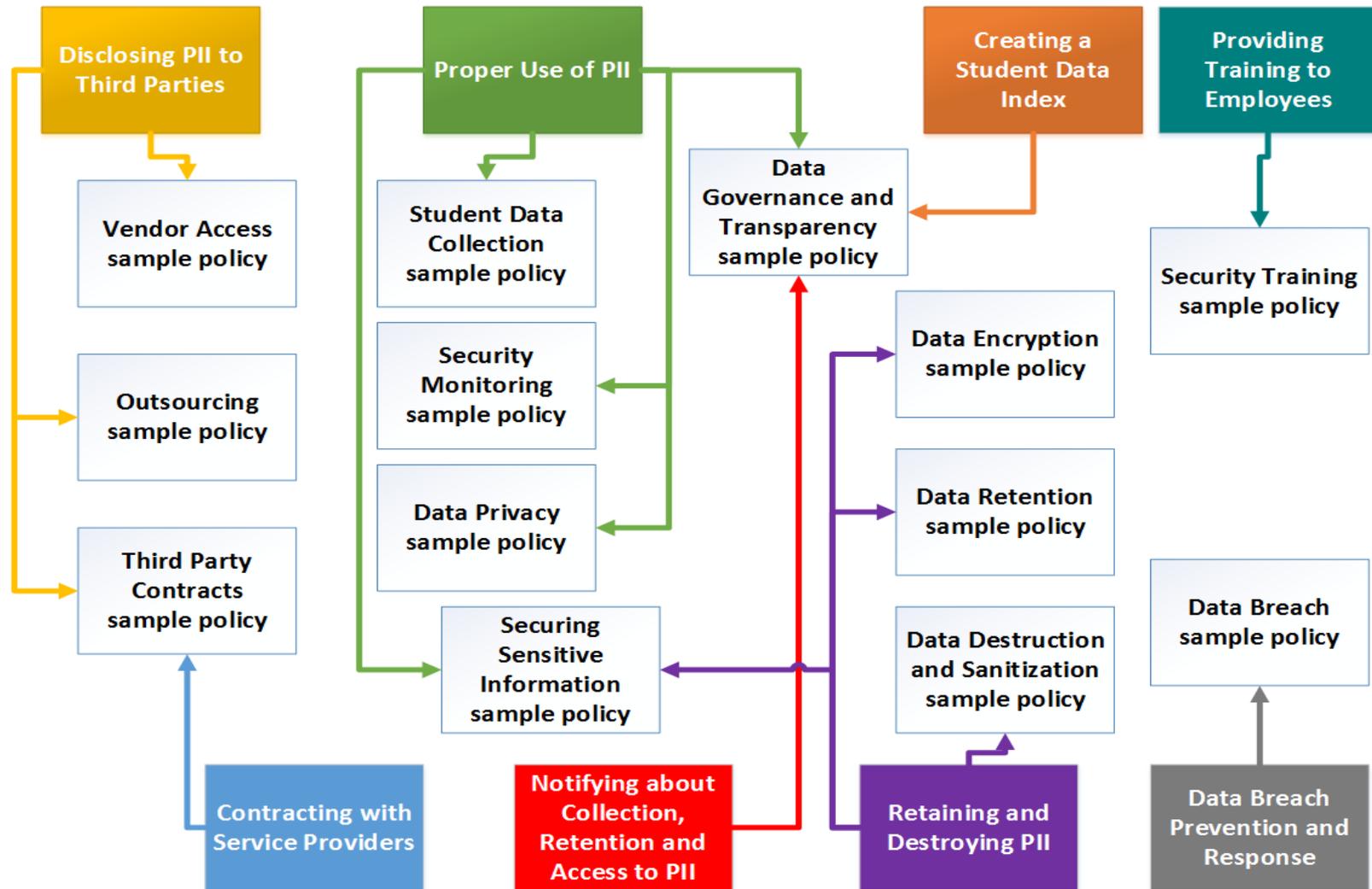
CASB has a sample Board level privacy policy and [CDE has sample procedures documents](#) that can assist with implementation

The student data privacy policy must contain the following topics:

- Creating and maintaining a student data index
- Retaining and destroying Student PII
- Proper use of PII
- Data breach prevention and response
- Contracting with School Service Contract Providers and using On-Demand Provider Services
- Disclosing Student PII to third parties
- Notifying parents regarding the collection of, retention of and access to Student PII
- Providing training in information security and privacy to employees

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CDE's Privacy and Security Implementation Policies



[CDE's sample policies](#) are not required and LEPs do not need to implement all or even any of these

Parent Rights and Complaints

- The parent of a student enrolled by a LEP has the right:
 - To inspect and review his or her child's PII
 - To request a paper or electronic copy of his or her child's PII
 - To request corrections to factually inaccurate PII
- The governing board of the LEP must have a policy for receiving complaints from parents regarding the LEP's compliance with the law
 - The governing body must hold a hearing to discuss
 - Action must be taken within sixty days after the hearing

CASB has a sample Board
parent complaint policy



Questions?

Guidance and support from CDE personnel:

- Marcia Bohannon – bohannon_m@cde.state.co.us
 - Jill Stacey - stacey_j@cde.state.co.us
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