Colorado's New Data Privacy Law

Contract Assistance

What does the law say?

- Each Local Education Provider (LEP) shall ensure that the terms of each contract that the Local Education Provider enters into or renews with a School Service Contract Provider on and after the effective date of this Article (**August 10, 2016**), at a minimum, require the Contract Provider to comply with the requirements in Sections 22-16-108 to 22-16-110. [C.R.S. 22-16-107 (2)(a)]

Key Definitions – Contract Provider

- "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.

- An example of a school Contract Provider is your Student Information System (SIS) provider.

  - You negotiate (or have the option to negotiate your contract) with the SIS provider.

  - They are an online application that is used at the direction of school employees. It's designed to be used in a school and holds PII.

*Public Education Entities includes LEPs and CDE.

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.

Google Maps is not a School Service. Google Apps for Education may be.

CDE is here to help!

- The Department shall prepare and make available to Local Education Providers sample contract language for use in contracting with School Service Contract Providers. [C.R.S. 22-16-106 (3)]

- CDE has prepared a sample template of privacy and security terms that you can use to comply with this law.

- CDE has drafted this template to be similar to what we are using for our vendors and includes language that we feel are best practices for privacy and security.

This is Your Template

- Each contract is different and your contract templates should work for you.

  - Different situations require different controls.

  - Vendors may seek to negotiate terms based on what services they provide.

  - LEPs may have different interpretations on what the law says and how they seek to comply.

- Because of this, each LEP can amend this document to fit your needs. If you want to amend a section, you can do so. If something doesn't work for you, feel free to remove it. If you choose to not use the template at all, that is up to you.

- If you choose to amend or remove a section that is marked as required by the law, we advise you to consult with legal counsel prior to doing so.

- NOTE: This template is provided as an example. Your contract template should be reviewed and approved by your legal counsel prior to being finalized.

CDE's Sample Template

EXHIBIT X

CONFIDENTIALITY, PRIVACY, AND SECURITY ADDENDUM

This addendum is hereby incorporated into the _____ agreement dated _____ between the LEP and the Contractor. Attached after the addendum is the referenced agreement. This Confidentiality Addendum ("Addendum") is part of the Contract between [LEP] and the Contractor. For purposes of this Agreement, [LEP] is referred to as "[LEP]" and the Contractor is referred to as "Contractor."

RECITALS

A.   LEP wishes to disclose certain information to Contractor pursuant to the work being performed by Contractor, some of which may constitute Student Personally Identifiable Information (defined below).

B.   LEP and Contractor intend to protect the privacy and provide for the security of Student Personally Identifiable Information disclosed to Contractor pursuant to this Contract. Contractor shall adhere to 22-16-101 _et. al._, C.R.S.; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; and 34 C.F.R. Part 99.

C.   The Department is required to enter into a contract, this Addendum, containing specific requirements with Contractor prior to the disclosure of Student Personally Identifiable Information, as set forth in, but not limited to, 22-16-101 _et. al._, C.R.S.; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; and 34 C.F.R. Part 99, and the requirements contained in this Addendum.

The parties agree as follows:

A. Definitions

1.   "Aggregate Data" means data collected and reported at the group, cohort, or

This template can be used as an exhibit to your existing contracts, the contract language can be inserted into your contract templates, or both.

Why is the template so detailed?

(provided that the student is over the age of 18) or the student's parent or legal guardian.[21]

H. Data Security[22]

1. Contractor shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of PII. At a minimum, the information security program shall include the requirements listed in this Section H – Data Security.

It is important that your expectations for each contract provider is clearly laid out. For example, the law requires providers to have a "comprehensive information security program" but providers and LEPs may have very different concepts of what is comprehensive. Laying it out in detail avoids any confusion.

For example, we have included what CDE determines makes up a "comprehensive information security program". This section is customizable but represents general best practices.

Addendum to Existing Contracts

Change this exhibit letter to whatever makes sense for the contract.

EXHIBIT X
CONFIDENTIALITY, PRIVACY, AND SECURITY ADDENDUM

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Attach the signed contract to the end of this Addendum.

...tion to Contractor pursuant to the work being performed by Contractor, some of which may constitute Student Personally Identifiable...

Insert the name, the number, or some other identifier for the signed contract with the Service Provider.

Once these steps are complete, you can send to the vendor for their signature and then sign yourself when it is returned.

Insertion into Your Contracts

If you choose to insert the core privacy and security language into your templates, remove the sections circled in red.

EXHIBIT X
CONFIDENTIALITY, PRIVACY, AND SECURITY ADDENDUM

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RECITALS

A. LEP wishes to disclose certain information to Contractor pursuant to the work being performed by Contractor, some of which may constitute Student Personally Identifiable Information (defined below).

B. LEP and Contractor intend to protect the privacy and provide for the security of Student Personally Identifiable Information disclosed to Contractor pursuant to this Contract. Contractor shall adhere to 22-16-101 _et. al._, C.R.S.; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; and 34 C.F.R. Part 99.

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The parties agree as follows:

A. Definitions

1. "Aggregate Data" means data collected and reported at the group, cohort, or institutional level that is aggregated using protocols that are effective for preserving the anonymity of each individual included in the data.[1]

2. "Destroy" means to remove Student Personally Identifiable Information from

THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the LEP is relying on their representations to that effect.

CONTRACTOR   [LEP]

By: _____   By: _____
Name of Authorized Individual   Name of Authorized Individual

Title: _____   Title: _____
Official title of Authorized Individual   Official title of Authorized Individual

_____   _____
*Signature   *Signature

Guidance Notes

CDE has inserted Guidance Notes to assist with using this template.

Law References

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.[6] PII also includes other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.[7]

7. "Subcontractor" means any third party engaged by Contractor to aid in performance of Contractor's obligations.

8. "Targeted Advertising" means selecting and sending advertisements to a student based on information obtained or inferred over time from th of applications, or PII. Targeted Advertising does no at an online location based on the student's current vi to the student's request for information or feedback a

We have provided references to all the sections that are pulled from law.

[3] C.R.S. 22-16-107 (2)(a)
[4] C.R.S. 22-16-103 (7)
[5] C.R.S. 22-16-103 (8)
[6] C.R.S. 22-16-103 (13)
[7] FERPA Definition

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Clean Template

any subsequent Subcontractor, Contractor shall notify LEP with
regardless of whether the misuse or unauthorized release by th
result of a material breach of the terms of the Contract or results i

4. No later than thirty (30) days after the signing of this Contract, Co
the LEP with information detailing the purpose and the scope of
the Contractor and all Subcontractors and the types and

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8 C.R.S. 22-16-103 (14)
9 C.R.S. 22-16-108 (2)
10 C.R.S. 22-16-109 (3)(b)
11 C.R.S. 22-16-109 (3)(b)

CDE is also providing LEPs with a clean version of the document that does not have comments or footnotes.

Stacey, Jill
Guidance Note: Insert the appropriate letter for your contracts.

Stacey, Jill
Guidance Note: CDE is providing this template to LEPs to comply with the requirements of C.R.S. 22-16-106 (3). LEPs can choose to use this template to comply with the obligations in C.R.S. 22-16-107 (2)(a).

Stacey, Jill
Guidance Note: Insert name and/or number of the contract.

Stacey, Jill
Guidance Note: This template can be used as an addendum that can be signed in and incorporated into your existing contract with the Service Provider. Or, the content of this addendum can be incorporated into you contract templates.

Stacey, Jill

Need Assistance?

Data Privacy Office @ CDE

Jill Stacey

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