



**COLORADO**  
Department of Education

Information Management Services  
201 East Colfax Avenue  
Denver, CO 80203-1799

July 22, 2016

Dear Vendor, Agency, and/or Researcher:

As you may know, Colorado recently passed a new student data privacy law. This law impacts any third party receiving Student Personally Identifiable Information (PII) from the Colorado Department of Education (CDE) and also has new language for interactions with Local Education Providers (LEP's). We wanted to inform you of this new legislation and some pertinent high-level information that will assist you in managing your relationship with districts and state agencies. For reference, the specific citation of the new law is Colorado Revised Statute Section 22-16-101 et. seq.

This letter provides you with some basic information on how to comply with the revised law as it applies to CDE relationships. You may have additional requirements if you receive PII from any Colorado Local Education Provider (district, charter school, or Boards of Cooperative Educations (BOCES). We strongly recommend that you thoroughly review the contents of the law and work with your legal counsel to determine how this law will affect you.

CDE has specific duties and oversight responsibilities as part of this new law. Three main areas are outlined below covering revised contracts, material breaches, and required reporting. This letter is not designed to answer all questions/scenarios about the law and is provided only as a basic introduction to some areas that may impact you as a data requestor, consumer, and/or vendor. We recommend that you carefully review details in the law for impacts on your relationship and necessity for changes in contract or current operations. Summary contractual requirements involve the three main areas below:

**Contract Revisions** - The law stipulates that certain terms and conditions be met in all new, revised, or renewed contracts with the CDE when a vendor receives, accesses, or processes any Personally Identifiable Information (PII) as part of their relationship with the State. These provisions take effect on August 10<sup>th</sup>, 2016. New requirements include third party assurance/compliance in the following areas:

- **Data Use** - PII may only be used for the specified and explicit purposes authorized in a contract. If you would like to use data for another purpose, you must gain the consent of the student's parent or guardian or directly from the student if he/she is over the age of eighteen, and enter into a new contract.
- **Marketing and Reselling of Data**- PII may not be used for the purposes of targeted advertising or creation of a student personal profile (unless that profile is required to fulfill the purposes of the contract).
- **PII Disclosure** - Under normal circumstances, PII should never be disclosed outside of the contract terms. However, a third party can use or disclose PII for several specific compulsory/compliance purposes (like legal compliance) provided the third party notifies CDE as soon as possible after this use or disclosure.
- **Subcontractor Assurances** - There are specific requirements for contracts and arrangements you have with third parties that you engage with to aid in the performance of your contract with us.



- **Information and Data Security Assurances** - All PII recipients must maintain comprehensive information and data security programs. CDE makes the determination of what constitutes a comprehensive information security program.
- **Data Destruction** - On contract completion/termination, the third party must destroy all data collected or received as part of the relationship or when the PII is no longer needed to provide defined services listed in the contract.

The law is prescriptive in these terms. CDE cannot enter into or renew a contract with any third party that refuses to comply with the detailed terms, conditions, and requirements specified in the law. Because of this, there will be little room for CDE to negotiate our privacy and security contract provisions.

**Material Data Breach** - A second key requirement of the contract process surrounds data breaches and how they are addressed. Should a third party commit a material breach of the contract that results in the misuse or unauthorized access to PII, CDE is required to hold a public hearing to determine contract status. The Colorado State Board of Education ultimately determines contract status based on the results of the hearing and subsequent vote. The Board will be provided with information regarding the contractual breach, there will be a public comment period, and the effected third party may respond concerning the material breach of the contract.

**Public Reporting** - There are also explicit requirements regarding transparent public disclosure of third-party contracts, the parties that hold them, and their contents. CDE is required to post this information on our public website. This requirement includes but is not limited to:

- The contract and associated bid documents
- The name of the third party,
- The purpose and the scope of the contract,
- The duration/status of the contract,
- The types of PII that the third party hold under the contract,
- The uses of PII under the contract, and
- The length of time in which the third party can retain the PII.

Some of this information CDE will be able to gain during the contracting process but we may require additional information from each third party to comply with this requirement. In addition, any third party that processes, accesses, or receives PII from CDE must also post detailed information on its public website describing the data elements collected, the learning purpose for collecting the PII, and how you use and share PII from CDE.

Again, we recommend that you work with your legal counsel to understand your full requirements under this law. However, if you have specific questions related to data privacy, you can contact Jill Stacey, CDE's Data Privacy Analyst at 303-653-4494 or [Stacey\\_j@cde.state.co.us](mailto:Stacey_j@cde.state.co.us).

Sincerely,



Marcia Bohannon  
Chief Information Officer  
Colorado Department of Education

