

**TECHNICAL AMENDMENTS TO [A8929](#) to clarify and strengthen provisions to protect student privacy.**

***New text is highlighted in pink and gold. Revised by Leonie Haimson, Class Size Matters and Barmak Nassirian.***

S 11. The education law is amended by adding a new section 3036 to read as follows:

S 3036. COMMON CORE TRAINING PROGRAM. SCHOOL DISTRICTS AND BOARDS OF COOPERATIVE EDUCATIONAL SERVICES SHALL CONSIDER THE ADOPTION AND IMPLEMENTATION OF A COMMON CORE TRAINING PROGRAM FOR TEACHERS AND PRINCIPALS. SUCH PROGRAM MAY BE PART OF A SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES' PROFESSIONAL DEVELOPMENT PLAN. SUCH PROGRAM SHALL BE DEVELOPED IN CONSULTATION WITH TEACHERS, PRINCIPALS, AND THE DEPARTMENT; SUCH PROGRAM SHALL BE DESIGNED TO, AND INCLUDE MEASURES AND ACTIONS TO, ASSIST TEACHERS AND PRINCIPALS WITH PROFESSIONAL DEVELOPMENT AND TEACHING SKILLS RELATED TO THE COMMON CORE LEARNING STANDARDS ADOPTED BY THE BOARD OF REGENTS.

S 12. 1. Prior to July 1, 2015, the commissioner of education and the state education department are hereby prohibited from providing any personally identifiable information or de-identifiable student information to any third party vendor pursuant to any contract or memorandum of understanding for the purpose of collecting, storing and/or organizing student data or information in order to provide access to such data or information to third party vendors operating data dashboard solutions.

2. Definitions. As used in this section the following terms shall have the following meanings:

a. "Third party vendor" shall mean any person or entity other than a school district, board of cooperative educational services (BOCES), institutions providing higher education as such term is defined in subdivision 8 of section 2 of the education law or the state education department.

b. "Data dashboard solutions" shall mean third-party electronic data system or hosted software application or applications designed to provide educators, students and their families with timely and relevant student data and information that support instruction and student learning and is part of an educational data portal, which the state education department, BOCES, school districts, students and/or their families participate in.

c. "Personally identifiable information" shall have the same meaning as such term is defined in section 99.3 of title 34 of the code of federal regulations implementing the Family Education Rights and Privacy Act, as such federal law and regulations are from time to time amended.

d. "De-identifiable student information" shall mean a collection of data or information that has been altered ~~with the goal of making~~ **TO MAKE** the student or students associated with such data or information permanently unknowable.

S 13. The education law is amended by adding a new section 2-c to read as follows:

S 2-C. ~~RELEASE~~ **DISCLOSURE** OF PERSONALLY IDENTIFIABLE INFORMATION. 1. DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "PERSONALLY IDENTIFIABLE INFORMATION" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SECTION 99.3 OF TITLE 34 OF THE CODE OF FEDERAL REGULATIONS IMPLEMENTING THE FAMILY EDUCATION RIGHTS AND PRIVACY

ACT, AS SUCH FEDERAL LAW AND REGULATIONS ARE FROM TIME TO TIME AMENDED.

B. "BIOMETRIC RECORD" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SECTION 99.3 OF TITLE 34 OF THE CODE OF FEDERAL REGULATIONS IMPLEMENTING THE FAMILY EDUCATION RIGHTS AND PRIVACY ACT, AS SUCH FEDERAL LAW AND REGULATIONS ARE FROM TIME TO TIME AMENDED.

C. "SCHOOL" SHALL MEAN ANY PUBLIC ELEMENTARY OR SECONDARY SCHOOL, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, CHARTER SCHOOL, SPECIAL ACT SCHOOL DISTRICT, PUBLIC SCHOOL KINDERGARTEN PROGRAM, UNIVERSAL PRE-KINDERGARTEN PROGRAMS AUTHORIZED PURSUANT TO SECTION THIRTY-SIX HUNDRED TWO-E OF THIS CHAPTER, PUBLICLY FUNDED PRE-KINDERGARTEN PROGRAMS, APPROVED PRESCHOOL SPECIAL EDUCATION PROGRAMS PURSUANT TO SECTION FORTY-FOUR HUNDRED TEN OF THIS CHAPTER, APPROVED PRIVATE SCHOOL FOR THE EDUCATION OF STUDENTS WITH DISABILITIES AND A STATE SUPPORTED SCHOOL SUBJECT TO THE PROVISIONS OF ARTICLE EIGHTY-SEVEN OR EIGHTY-EIGHT OF THIS CHAPTER.

D. "STUDENT" SHALL MEAN ANY PERSON ATTENDING A SCHOOL IDENTIFIED IN PARAGRAPH C OF THIS SUBDIVISION.

E. "THIRD PARTY" SHALL MEAN ANY PERSON OR ENTITY OTHER THAN A SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES, INSTITUTION OF HIGHER EDUCATION, SCHOOL AS DEFINED IN PARAGRAPH C OF THIS SUBDIVISION OR THE DEPARTMENT.

2. A PARENT OF A STUDENT, A PERSON IN PARENTAL RELATION TO A STUDENT, OR A STUDENT EIGHTEEN YEARS OF AGE OR OLDER MAY REQUEST THAT SUCH STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION AND/OR SUCH STUDENT'S BIOMETRIC RECORD NOT BE DISCLOSED TO ANY THIRD PARTY. THE DEPARTMENT AND/OR ANY SCHOOL THAT RECEIVES SUCH REQUEST SHALL BE PROHIBITED FROM DISCLOSING SUCH INFORMATION TO ANY THIRD PARTY UNLESS SUCH DISCLOSURE IS REQUIRED BY LAW, PURSUANT TO A COURT ORDER OR SUBPOENA, FOR THE PURPOSE OF A STATE OR FEDERAL AUDIT OR EVALUATION TO AUTHORIZED REPRESENTATIVES OF ENTITIES IDENTIFIED IN SECTION 99.31 (A) (3) OF TITLE 34 OF THE CODE OF FEDERAL REGULATIONS IMPLEMENTING THE FAMILY EDUCATION RIGHTS AND PRIVACY ACT, OR IS NECESSARY DUE TO A HEALTH OR SAFETY EMERGENCY.

3. THE DEPARTMENT AND/OR SCHOOL DISTRICTS AND/OR SCHOOLS SHALL DEVELOP A FORM THAT SHALL BE USED FOR REQUESTS MADE PURSUANT TO SUBDIVISION TWO OF THIS SECTION. SUCH FORM SHALL BE MADE PUBLICLY AVAILABLE AND SHALL ALLOW SUCH INDIVIDUALS THE OPTION TO OPT-OUT OF DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION AND BIOMETRIC RECORDS TO ANY THIRD PARTY OR TO CERTAIN TYPES OF THIRD PARTIES. THE DEPARTMENT, AND/OR SCHOOL DISTRICTS AND/OR SCHOOLS IS AUTHORIZED TO SHALL IDENTIFY A THE LIST OF TYPES OF THIRD PARTIES, BY CATEGORY, TYPES OF DATA THAT WOULD BE DISCLOSED TO THIRD PARTIES, PURPOSE OF SUCH DISCLOSURES AND TYPES OF SERVICES SUCH THIRD PARTIES WOULD PROVIDE. THAT INDIVIDUALS ELIGIBLE STUDENTS OR THEIR PARENTS OR LEGAL GUARDIANS MAY SHALL HAVE THE RIGHT TO OPT-OUT OF DISCLOSURE OF SUCH PERSONALLY IDENTIFIABLE INFORMATION AND FROM EDUCATION RECORDS AT THEIR SOLE DISCRETION. AND SUCH INDIVIDUALS MAY OPT-OUT OF DISCLOSURE OF SUCH INFORMATION AND RECORDS TO ANY TYPE AND/OR ALL OF THE LISTED THIRD PARTIES. SUCH LIST DEVELOPED BY THE DEPARTMENT SHALL NOT REQUIRE THE NAMES OF SUCH THIRD PARTIES TO BE LISTED. SUCH LIST MAY IDENTIFY THE TYPES OF SERVICES SUCH THIRD PARTIES PROVIDE.

4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE SHARING DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION AND BIOMETRIC RECORDS BY CHARTER SCHOOLS TO A NOT-FOR-PROFIT CORPORATION OR A FOR-PROFIT BUSINESS OR CORPORATE ENTITY THAT THE CHARTER SCHOOL WAS FORMED IN CONJUNCTION WITH.

5. SCHOOLS AND THE DEPARTMENT MAY NOT UNDER ANY CIRCUMSTANCE DISCLOSE

**Comment [L1]:** NYSED is not necessarily aware of all the data-sharing practices of districts and schools; therefore they cannot have sole responsibility to producing an opt out form.

**Comment [L2]:** By saying that the state "is authorized" to provide a list of vendors that parents "may" opt out of, it leaves the discretion to NYSED about which instances of data disclosure that parents will be allowed to opt out of, and this confusingly contradicts the previous provision. Instead of "authorized" and "may", both words should be changed to "shall" in order to make it clear that parents do have this right in all cases.

**Comment [L3]:** Parents need to know which types of data are going to be disclosed to third parties in making their decision whether to opt out. Some parents would not mind names and addresses being disclosed; but would mind health, disability or disciplinary data being disclosed.

PERSONALLY IDENTIFIABLE INFORMATION OR BIOMETRIC RECORDS TO ANY THIRD PARTY UNLESS SUCH THIRD PARTY HAS AGREED IN WRITING TO:

A. PROVIDE THE DEPARTMENT OR THE CONTRACTING SCHOOL WITH A BREACH REMEDIATION PLAN ACCEPTABLE TO THE DEPARTMENT OR THE SCHOOL;

B. REPORT ALL SUSPECTED SECURITY BREACHES TO THE DEPARTMENT OR CONTRACTING SCHOOL AS SOON AS POSSIBLE BUT NOT LATER THAN FORTY-EIGHT HOURS AFTER SUCH SUSPECTED BREACH WAS KNOWN OR WOULD HAVE BEEN KNOWN BY EXERCISING REASONABLE DUE DILIGENCE; AND

C. REPORT ALL ACTUAL SECURITY BREACHES TO THE DEPARTMENT OR CONTRACTING SCHOOL AS SOON AS POSSIBLE, BUT NOT LATER THAN TWENTY-FOUR HOURS AFTER SUCH ACTUAL BREACH WAS KNOWN OR WOULD HAVE BEEN KNOWN BY EXERCISING REASONABLE DUE DILIGENCE.

D. IS UNDER THE DIRECT CONTROL OF THE AGENCY OR INSTITUTION WITH RESPECT TO THE USE AND MAINTENANCE OF EDUCATION RECORDS;

E. LIMITS INTERNAL ACCESS TO EDUCATION RECORDS TO THOSE INDIVIDUALS THAT ARE DETERMINED TO HAVE LEGITIMATE EDUCATIONAL INTERESTS;

F. DOES NOT USE THE EDUCATION RECORDS FOR ANY OTHER PURPOSES THAN THOSE EXPLICITLY AUTHORIZED IN ITS CONTRACT;

G. MAINTAINS REASONABLE ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS TO PROTECT THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF PERSONALLY IDENTIFIABLE STUDENT INFORMATION IN ITS CUSTODY;

H. USES ENCRYPTION TECHNOLOGIES TO PROTECT DATA WHILE IN MOTION OR IN ITS CUSTODY FROM UNAUTHORIZED DISCLOSURE USING A TECHNOLOGY OR METHODOLOGY SPECIFIED BY THE SECRETARY OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES IN GUIDANCE ISSUED UNDER SECTION 13402(H)(2) OF PUBLIC LAW 111-5;

I. HAS SUFFICIENT ADMINISTRATIVE AND TECHNICAL PROCEDURES TO MONITOR CONTINUOUSLY THE SECURITY OF PERSONALLY IDENTIFIABLE INFORMATION IN ITS CUSTODY;

J. CONDUCTS A SECURITY AUDIT ANNUALLY AND PROVIDES THE RESULTS OF THAT AUDIT TO EACH DEPARTMENT, DISTRICT BOARD OF EDUCATION, OR INSTITUTION THAT PROVIDED EDUCATIONAL RECORDS;

K. IN THE EVENT OF A SECURITY BREACH OR UNAUTHORIZED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION, PAYS ALL COSTS AND LIABILITIES INCURRED BY THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, OR INSTITUTIONS RELATED TO THE SECURITY BREACH OR UNAUTHORIZED DISCLOSURE, INCLUDING BUT NOT LIMITED TO THE COSTS OF RESPONDING TO INQUIRIES ABOUT THE SECURITY BREACH OR UNAUTHORIZED DISCLOSURE, OF NOTIFYING SUBJECTS OF PERSONALLY IDENTIFIABLE INFORMATION ABOUT THE BREACH, OF MITIGATING THE EFFECTS OF THE BREACH FOR THE SUBJECTS OF PERSONALLY IDENTIFIABLE INFORMATION, AND OF INVESTIGATING THE CAUSE OR CONSEQUENCES OF THE SECURITY BREACH OR UNAUTHORIZED DISCLOSURE; AND

L. DESTROYS OR RETURNS TO THE DEPARTMENT, DISTRICT BOARDS OF EDUCATION, OR INSTITUTIONS ALL PERSONALLY IDENTIFIABLE INFORMATION IN ITS CUSTODY UPON REQUEST AND AT THE TERMINATION OF THE CONTRACT.

M. BY SEPTEMBER 1, 2015, THE LEGISLATURE SHALL APPOINT A TASKFORCE OF STAKEHOLDERS, INCLUDING PARENTS, ADVOCATES, EDUCATORS, DISTRICT ADMINISTRATORS AND DATA SPECIALISTS, TO INVESTIGATE CURRENT STUDENT DATA SHARING PRACTICES OF THE STATE AND DISTRICTS, AND PROPOSE FURTHER MEASURES TO PROTECT STUDENT PRIVACY.

**Comment [NB4]:** Ensures that third-party recipients are subject to direct control with regard to any personally identifiable information they receive

**Comment [NB5]:** Further limits access *within* the receiving organization by imposing the same condition that FERPA applies to principals

**Comment [NB6]:** Prohibits repurposing of personally identifiable information by contractors

**Comment [NB7]:** Mandates reasonable qualifications that all contractor must meet in order to qualify.

**Comment [NB8]:** Almost all contractors use or claim to use some type of encryption, but rarely disclose exactly how robust their encryption technology is. This references HHS encryption standards for medical records, which are almost invariably co-mingled with education records at most institutions.

**Comment [NB9]:** Requires constant monitoring, not just an annual review.

**Comment [NB10]:** Mandator annual audit that **must** be provided to contracting party.

**Comment [NB11]:** Financial indemnification

**Comment [NB12]:** Explicit record retention rule

**Comment [L13]:** The extent and nature of current data-sharing practices is unknown and this is a fast changing area. Whatever privacy protections approved now are unlikely to be a permanent solution. We need to find out what the state and districts are currently planning to do with personal data, and ensure that their practices in the future ensure children's privacy and security to the extent practicable.