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Chancellor Richard A. Carranza
NYC Department of Education
52 Chambers Street
New York, NY 10007

Dear Chancellor Carranza:

As you are aware, in March 2014, the New York State Legislature approved a comprehensive student privacy law, Education Law Section 2-D. One provision of that law provided parents with new rights, including more transparency about which third parties were allowed access to student data. These rights and more were incorporated into a Parent Bill of Rights [PBOR], which was supposed to be included in every district's contracts with vendors and other third parties.

The State Education Department finalized the regulations for this law on January 1, 2020. Those regulations required districts to post the Parent Bill of Rights [PBOR] for each contract, which was supposed to detail how the personal student data will be protected, how parents can access the data to challenge its accuracy if necessary, and when the vendor will delete it, among other requirements.

All the law's provisions and enacting regulations became final and enforceable on January 1, 2020, except for one. Due to the COVID-19 pandemic, the State Education Department extended the deadline for districts to publish new data privacy policies from July 1, 2020 to October 1, 2020.

The Parent Coalition for Student Privacy [PCSP] has compiled a list of about a hundred online programs that the DOE has offered to teachers and/or assigned to students, many of which are in use due to the adoption of remote learning. The providers or operators of these online programs and apps likely have access to personal student data, and yet none of their contracts or PBORs are posted on the DOE website.

In several cases, their publicly available privacy policies do not appear to comply with the state law, and in many instances, their programs have received low grades for privacy from Common Sense Media.

Currently on the relevant [DOE data privacy page](#) there are only three companies' contracts and associated PBORs posted. These are contracts with companies engaged to do random COVID testing of students and teachers in the public schools, which were posted after urging from parent leaders and teachers.

And yet, even these contracts do not clearly state when the personal student data will be deleted, which is contrary to Section 2-D's implementing [regulations](#), which require contractors to "describe whether, how and when data will be returned to the educational agency, transitioned to a successor contractor, at the educational agency's option and direction, deleted or destroyed by the third-party contractor when the contract is terminated or expires."

Some of these contracts cite federal and state laws which they say bar the deletion of this data and supersede the student privacy law, including the federal [Clinical Laboratory Improvement Amendments \(CLIA\)](#). However, these amendments would appear to allow for de-identified data to be retained instead of personal data. Such retention would not be barred by Section 2-D.

My questions are as follows:

- Has the DOE posted a student data privacy policy that is compliant with Section 2-D of the Education Law on its website, and if so, where can it be found? If not, when does the DOE intend to post it?
- When will the DOE post all the contracts and relevant Parent Bill of Rights with each of the vendors that have access to personal student data? These also should include agreements with any vendors providing "freeware" products that teachers have been allowed to use, who are not exempt from complying with the state student privacy law.
- Please explain why the contracts with COVID testing vendors do not specify when personal student data will be deleted. If there are federal or state laws that supplant the requirements of Section 2-D, please provide links to these laws and explain why they do not allow for the retention of de-identified data instead.

It is critical that the privacy of NYC public school students is rigorously protected and that their data is utilized for only the purposes strictly outlined in contracts and deleted as soon as possible, as the law requires. Parents must know that their children's personal information is safe from breach or abuse, and that all their rights under the law are ensured.

Your attention and prompt response to this letter is greatly appreciated. If you have any questions, please don't hesitate to contact me at (212) 633-8052 or hoylman@nysenate.gov.

All best,



Brad Hoylman
New York State Senator
27th Senate District