



CONNECTICUT STATE  
DEPARTMENT OF EDUCATION

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# **Public Act 16-189**

# **An Act Concerning Data Privacy**

September 8, 2016

# Written Contract Required

Boards of education are required to enter into a **written contract** with a contractor any time such board of education **shares or provides access to** student information, student records, or student-generated content.



# What is a “Contractor”?

Contractor: an “operator” or “consultant” that is in possession of or has access to student information, student records, or student-generated content as a result of a contract with a board of education.



# What is an “Operator”?

Any person who:

- Operates an Internet web site, online service or mobile application with actual knowledge that such Internet web site, online service or mobile application is used for school purposes and was designed and marketed for school purposes to the extent it is engaged in the operation of such Internet web site, online service or mobile application, and
- Collects, maintains or uses student information.



# What is a “Consultant”?

A professional who provides non-instructional services, including, but not limited to, administrative planning, analysis, statistical or research services, to a local or regional board of education pursuant to a contract with such board of education.



# What is “Student Information”?

PII or material in any media or format not publicly available and is any of the following:

- Created or provided by a student or the parent to the operator in the course of the student using the operators Internet web site, online service or mobile application for school purposes;
- Created or provided by an employee or agent of the school to an operator for school purposes;
- Gathered by an operator through the operation of the Internet web site, online service or mobile application; including but not limited to . . . (lists examples.)



# What is a “Student Record”?

Any information directly related to a student that is maintained by a board of education, the State Board of Education or the Department of Education or any information acquired from a student through the use of educational software assigned to the student by a teacher or employee of the board of education.

(Exempts certain de-identified student information.)



# What is “Student-Generated Content”?

Any student materials created by a student including, but not limited to, essays, research papers, portfolios, creative writing, music or other audio files or photographs.

(Exempts student responses to a standardized assessment.)





# What constitutes “School Purposes”?

Purposes that customarily take place at the direction of a teacher or board of education or aid in the administration of school activities, including but not limited to, instruction in the classroom, administrative activities and collaboration among students, school personnel or parents or legal guardians.



# Written Contract

The contract must be in writing and must contain specific provisions as detailed in the Public Act:



# General Contractual Provisions Required by the Public Act

A statement that the student information, student records or student-generated content are not the property of or under the control of the contractor.

Example: Nothing in this Agreement shall be construed to confer upon the Contractor any property right over student information, student records, or student-generated content.



# General provisions

A description of the means by which the board of education may request the deletion of student information, student records or student-generated content in the possession of the contractor.



# General provisions

A statement that the contractor shall not use student information, student records and student-generated content for any purpose other than the purpose authorized pursuant to the contract.



# General provisions

A description of the procedures by which a student, parent or legal guardian may review personally identifiable information contained in student information, student records and student-generated content and correct erroneous information, if any, in such student record.



# General provisions

A statement that the contractor shall take actions designed to ensure the security and confidentiality of student information, student records and student-generated content.



# General provisions

## Security procedures

A description of the procedures that the contractor will follow to notify the board of education when there has been an unauthorized release, disclosure or acquisition of student information, student records and student-generated content.





# Section 4 Addresses Security Breaches\*

Upon discovery of a breach of security that results in an unauthorized release, disclosure or acquisition of student information (excluding directory information), contractor shall notify the board without unreasonable delay of the breach.

\*Note: this is the minimum required by the statute. You can try to negotiate more stringent requirements for reporting security breaches.



# Security Breaches

With respect to the unauthorized release of student information, excluding any directory information, the contract shall notify the board of the breach, without unreasonable delay, but no later than 30 days after such discovery.



# Security Breaches

With respect to the unauthorized release of directory information, student records or student-generated content, a contractor must notify the board of such breach without unreasonable delay, but not later than 60 days after discovery.



# Security Breaches

During the 30-day or 60-day period, the contractor may investigate the nature and scope of the breach and determine the identity of the students whose information, student records, or student-generated content was involved in the breach. During this period the contractor may also take measures to restore the reasonable integrity of the data system.



# General Provisions

A statement that student information, student records and student-generated content shall not be retained or available to the contractor after completion of the contracted services unless a student, parent or legal guardian chooses to establish or maintain an electronic account with the contractor for the purpose of storing such information.



# General Provisions

A statement that the contractor and board of education shall ensure compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g.

Example: In all respects, the parties shall comply with the provisions of the Family Education Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g, and the regulations promulgated thereunder, as amended from time to time (FERPA). Nothing in this Agreement shall be construed to allow either party to maintain, use, disclose or share student information as defined by FERPA in a manner prohibited by federal law or regulation or by this Agreement.



# General Provisions

A statement that the laws of the state of Connecticut shall govern the rights and duties of the contractor and the board of education.

Example: This Agreement shall be governed by the laws of the State of Connecticut without regard to its principles of conflicts of laws.



# General Provisions

A statement that if any provision of the contract or the application of the contract is held invalid by a court of law, the invalidity does not affect the other provisions or applications of the contract which can be given effect without the invalid provision or application.

Example: If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.





# Operator Security Procedures

What is an “operator”?

“Operator” means any person who (A) operates an Internet web site or mobile application with actual knowledge that such Internet web site, online service or mobile application is used for school purposes and was designed and marketed for school purposes, to the extent it is engaged in the operation of such Internet web site, online service or mobile application, and (B) collects, maintains, or uses student information.



# Operator Security Procedures

An operator shall implement and maintain security procedures and practices that meet or exceed industry standards and that are designed to protect student information, student records and student-generated content from unauthorized access, destruction, use, modification or disclosure.



# Operator Security Procedures

An operator shall delete any student information, student records and student-generated content within a reasonable amount of time if a student, parent or legal guardian of a student or the board of education requests the deletion of such student information, student records and student-generated content.



# Prohibited Activities

## NO targeted advertising!

If the targeted advertising is based on student information, student records and student-generated content or persistent unique identifiers that the operator acquired because of the use of the operators Internet web site, online service or mobile application for school purposes.



# Prohibited Activities

NO collecting, storing or using student information, student records and student-generated content or unique identifiers for purposes other than the furtherance of school purposes!



# Prohibited Activities

NO selling, renting or trading student information, student records and student-generated content unless part of a merger or acquisition of a successor operator



# Prohibited Activities

NO disclosing student information, student records or student-generated content . . .



# Exceptions

The operator may disclose student information, student records and student-generated content if the disclosure is made:

- In furtherance of school purposes if it is used to improve the operability and functionality of the Internet web site, online service or mobile application;
- To ensure compliance with federal law;





# Exceptions

- To respond to a court order;
- To protect the safety and integrity of users or others;
- To protect the security of the Internet web site, online service or mobile application;
- To an entity hired by the operator to provide services for the operator's Internet web site, online service or mobile application (with certain contractual provisions);



# Permissible Activities

The Public Act lists certain permissible activities.

- To maintain, support, improve, evaluate, diagnose operator's site, service or app;
- For adaptive learning purposes or customized student learning;
- To provide recommendation engines;
- To respond to a request for information or feedback from a student
- To develop or improve the site, service or app (de-identified or aggregate information);
- To improve or develop sites services or apps (de-identified or aggregate information).



# Contracts

How to construct your agreements

These are suggestions only. We recommend that you consult with your own legal counsel when drafting specific contractual provisions.



# Purpose

State clearly and concisely the purpose of the Agreement. Exactly why is the board engaging this contractor and what the overall product or service will the contractor provide?



# Definitions

Define in clear language all of the specific terms referenced in the Agreement.

- If you are using statutory provisions, it is a good practice to reference the statute and allow for any amendments to the statute to apply to your agreement.

Example: “Directory Information” shall have the same meaning as provided in Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g and the regulations promulgated thereunder (“FERPA”), as may be amended from time to time.



# Duties of the Contractor

What product or service is the contractor providing for your district? Be as specific as possible.

Also include:

- Destruction requirements for records and data
- Requirements to notify the board of any security breach
- Security procedures and practices

“Industry accepted standards or practices” What does that mean?



# Duties of the Board

What does the Board need to provide to the contractor to assist the contractor in completing its duties?



# General Provisions

Include the provisions listed earlier in this presentation.

- Application of Connecticut Law
- Severability
- FERPA Provision
- Student Records are not the property of the contractor, etc.





# Once the Contract is Done

## Parent Notification:

Within 5 business days after executing a contract, the board of education must provide notice to any student, parent or legal guardian affected by the contract.



# Notice of the Contract

This notice to students, parents and guardians must be posted on the board's Internet web site along with the contract.

The notice shall:

(1) State that the contract has been executed and the date that such contract was executed.



# Notice of the Contract

The notice shall:

(2) Provide a brief description of the contract and the purpose of the contract.



# Notice of the Contract

The notice shall:

(3) State what student information, student records or student-generated content may be collected as a result of the contract.



# Notice of the Contract

Can a district notify parents ONLY by posting the notice on its website?

- Statutory language suggests that simply posting the notice would not be sufficient. (Requires electronic notice to parent/student) AND requires posting the notice on the district's web site.
- Not all families have direct and easy access to the internet. Best practice would be to post on the website and provide some alternative means of notification.



# Questions?

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