

Student Data Privacy Task Force

**Meeting Minutes
Friday, February 15, 2019**

**55 Farmington Avenue
Room 1006
Hartford, CT 06105**

10:00 AM – 12:00 PM

Members in Attendance

- Douglas Casey (Chair), Connecticut Commission for Educational Technology
- Linnette Attai, Playwell LLC
- Ben FrazziniKendrick, Locke Lord LLP
- Jody Goeler, Hamden Public Schools
- Ajit Gopalakrishnan, Connecticut State Department of Education
- Michele Lucan, Office of the Attorney General
- Glenn Lungarini, Connecticut Association of Schools
- Teresa Merisotis, American Federation of Teachers
- Michael Purcaro, Connecticut Association of Boards of Education
- Daniel Salazar, Novus Insight

Agenda Items

Welcome

Doug Casey thanked the members of the task force for their time in preparing for and joining the meeting and remarked on the collective expertise, insights, and experience of the group. Members of the General Legislature and leaders of educational organizations statewide appointed each based on their esteemed qualifications.

Task Force Purpose and Scope

While the breadth and depth of issues related to the Connecticut student data privacy law are expansive, Doug reiterated the purpose of the task force, as defined by our State statute: to study a number of issues and generate a report to the General Law Committee. The relevant laws in Connecticut are Public Acts [16-189 \(CGS §§ Chap. 170, Sect. 10-234aa – dd\)](#), [17-200](#), and [18-125](#). The current law governing the use of student data, records, and information by public schools includes definitions, restrictions on the use by consultants and educational technology operators (collectively known as “Contractors”), and specific requirements in contracts that schools generate with contractors, among other issues. At its core, the law exists to provide greater controls and transparency over the use of student data in K – 12 public schools.

In reviewing the charge of the task force, Doug noted that subsequent public acts making changes to the law have addressed several of the original concerns that the group was to address. He outlined the agenda and purpose of the meeting, which is to review the issues the task force should address, by statute, as well as those raised by educational stakeholders since the passage of PA 16-189. Following that review, the group would prioritize the issues it would highlight in the report and discuss next steps.

Introduction of Members

Doug turned to the members and asked them to provide a brief professional background and how their work intersects with the student data privacy law. Teri Merisotis represents the American Federation of Teachers (AFT), providing lobbying services for the organization. Michael Purcaro serves as the Town Administrator of Vernon and has written the data privacy policy for his district. Ben FrazziniKendrick is an attorney for Locke Lord LLP and formerly served as a special education teacher. He concentrates his efforts on privacy and cybersecurity for a variety of clients and has studied and interpreted the Connecticut statute since its passage in 2016. Dan Salazar currently works for Novus Insight in East Hartford and formerly served as the technology director for two K – 12 districts. His firm provides technology services to schools and has made adjustments in its contract terms and services since the law's passage.

Glenn Lungarini leads the Connecticut Association of Schools, which represents approximately 1,000 institutions statewide. He also serves as the Executive Director of the Connecticut Interscholastic Athletic Conference, where he has been involved in data privacy issues related to eSports. Michele Lucan serves as Assistant Attorney General for the State in the Privacy and Data Security Department, which addresses a variety of issues, including the 800+ breach notifications it receives annually. Jody Goeler is the Hamden Public Schools Superintendent. He expressed his desire to see a balance between complying with the law and respecting student privacy, on the one hand, and supporting the use of innovative technologies that engage students and encourage deeper levels of learning. Linnette Attai leads Playwell, LLC, a consultancy that provides guidance to school districts on a variety of issues related to privacy and security, as outline in her recently published book, [Student Data Privacy](#). Ajit Gopalakrishnan serves as the State Department of Education's Chief Performance Officer, where he oversees the collection and reporting of student and school testing and other performance data. He has extensive experience with executing agreements that help ensure the protection of student data while maximizing the usefulness of this information to support teaching and learning.

Review of Issues

The group reviewed and discussed a number of topics related to the student data privacy act. The following sections summarize these concerns as they relate to the forthcoming report to the Legislature.

National Context: Ajit noted the detailed requirements of Connecticut's law regarding contracts between providers and schools. Linnette, who follows and has provided feedback on dozens of laws nationwide, described how laws in one state can influence those in others. For example, California's Law (SOPIPA) influenced the original Connecticut law. The contractual requirements in our state's law are now appearing in the bills presented in other states.

Uniform Contracting Language: Michael, Ajit, and others pointed to the inefficiencies of districts, schools, and even teachers needing to generate individual agreements with educational technology providers, as stipulated by the law. The requirement to have "written contracts" in place has seen different interpretations. Some districts insist on pen-and-paper agreements for the use of every app, extension, and software title, while others see the use of software according to posted terms (i.e., a "contract of adherence") that they scroll through and accept ("click-wrap" agreements) as constituting a "written contract."

Michael asked if a uniform agreement exists. As a result of last session's PA 18-125, the Commission for Educational Technology created a [Model Terms of Service Addendum](#). Doug created this document, which serves as boilerplate language that districts and their providers can customize to achieve compliance with the contractual requirements of the law. That said, many different district-level agreements exist, often reflecting the terms that those institutions require, according to local board policy.

Ajit asked if the State could provide a master contract or centralize negotiations with vendors. He pointed to the Department of Administrative Services (DAS) procurement services as a possible support in this area. Doug noted the launch in 2017 of the Commission's Educational Software Hub (<https://Connecticut.LearnPlatform.com>), a clearinghouse of educational technology that districts can leverage. The Hub allows companies to learn about and pledge compliance with Connecticut law, and visitors (e.g., district leaders and educators, parents, and other members of the educational community) can search for products by providers that have pledged compliance.

Inefficiency of Compliance: Ben expressed a need to reduce the cost of compliance on districts. Educational technology firms profit off of Connecticut schools, but to use their software districts need to invest indirect (e.g., staff time) and direct (e.g., external legal fees) resources. While not originally the intent of the law, it has put the onus of compliance on districts rather than providers. Doug echoed this concern, noting that some vendors even charge districts a premium to engage in contract negotiations.

Ben noted that other industries are subject to Connecticut laws and regulations, such as those protecting consumer rights, a requirement for doing business in the state. He questioned why specific contract language had to be in place with regard to

educational software, given that this requirement does not exist for other types of products. Michele acknowledged that the law's contractual requirements also help ensure that schools have some level of accountability for the decisions they make to share data with third-party vendors.

Cost of Compliance: Closely tied to the previous topic, several members expressed an interest in identifying and sharing with the Legislature the estimated costs of complying with the law. With many districts using hundreds if not thousands of software titles, reviewing and negotiating agreements has become a significant undertaking with many opportunity costs. The Commission has conducted a survey that estimates 80,000 staff hours statewide per year to conduct this additional contract review and negotiations. Jody noted that larger school districts are often better resourced to support compliance than are smaller or poorer districts.

Affected Parties: Jody brought up the question of why the law only applies to public school students. He questioned why protections did not also apply to students attending private or parochial schools.

Request of Data Deletion: Ajit raised and others echoed concerns about the conditions in which a parent or guardian may request the deletion of student information, records, or content. Districts leverage third parties to assist with all aspects of school operations and instruction, from student information systems and assessment to academic interventions. Deletion of data also contradicts state records retention laws. Linnette and Ben pointed to difficult precedents that this "request for deletion" option provides. If the intent were to remove operator access to student records, schools would still need to maintain these records. Consequently, parent insistence on removing records from one or more systems would force schools to maintain parallel systems, with the vast majority of student records in online systems and records of a few students maintained through paper or other offline systems. This redundancy constitutes another indirect cost of the statute.

Members also discussed scenarios whereby, for example, the deletion of an assignment would affect a student's final grade. Jody expressed concern that this could "game the system," resulting in inflated grades following the deletion of poor student work. Linnette suggested the addition of language that would ensure the removal of student data and records would not affect "the wholeness of the educational record, in consultation with the school district."

Definitions: Several members of the task force saw value in defining a number of ambiguous or difficult terms in the law. For example, as noted above, school districts have interpreted "written contract" differently. The idea of data "ownership" can be challenging as well. For example, use of cloud-based software in which students collaboratively create word-processing documents and presentations, makes single ownership of an academic record difficult to define.

Reasonable Penalties: Michele shared existing penalties for other types of “willful violations” of state statute, which can run as high as \$5,000 per data record. Linnette described penalties in place through two different California laws, as points of reference. One states that contracts without required statements and assurances can be voided if not cured within 30 days. The other addresses violation of the state business and professions code (misleading practices). Non-compliance with aspects of that law, including the contract requirements, results in applicable financial penalties under the state code.

Ajit suggested a model similar to instances of FERPA violations, with offending companies placed on a “black list” for a given period. Currently, the penalty for non-compliance is a voided contract. Ben noted that for most software companies, this does not serve as a significant deterrent. They may well decide to forego a renewed contract, which they see as not worth their time to negotiate. A small district depending on that software has more significant direct and indirect costs for a voided contract (e.g., need to find an alternative, migration and startup costs for a new system, etc.). As someone who has had to negotiate terms between districts and software providers, Ben felt that having a “Penalties” section of the law would force companies to take compliance more seriously. Michele encouraged more specific periods than the current “reasonable amount of time” for vendors to bring their terms into compliance.

Training: Many school districts provide their teachers and staff with professional development around data privacy and security. Creating a common store of training materials at the state level would help ensure high quality and consistency of message while relieving the burden on each town of developing these resources. The task force members felt strongly that students, teachers, and the broader educational community need support in understanding best practices in data protections and data hygiene. Doug noted that this training should align with other frameworks and practices, such as the newly adopted digital learning (ISTE Student) standards.

Administrative Hearings: The law asks the task force to address “the use of an administrative hearing process designed to provide legal recourse” to students and parents regarding violations of the law. Several task force members acknowledged this practice already in place, regarding expulsion hearings or issues of residency, for example. Parents already have the ability to voice concerns over issues that affect their own students or the broader student body. Defining a separate type of administrative hearing would not change how parents raise and escalate such concerns with district administrative teams.

Future Meetings

Upon review of the issues discussed and those that the statute calls the task force to address in its report, the members agreed to at least one additional meeting. In the meantime, Doug would draft an outline of the report and allow members to add to and comment on the document. The next meeting would focus on revisions to the report, with the intent of finishing the document in time for members of the General Assembly to consider its recommendations in light of possible revisions to the law during the current legislative session.

Other Business

Doug reminded the group that the General Law Committee's Web site houses the task force's documents:

www.cga.ct.gov/GL

The task force page includes a list of its members as well as related documents such as meeting agenda and minutes.

Public Comment

No members of the public attended the meeting.

Adjournment

Doug thanked the members for their insights and efforts and adjourned the meeting shortly after 12:00 PM.