

K-12 Privacy Leaders Working Group meeting

Wednesday, February 15, 2017

11:00am – 12:00pm EST

Topic: Vendor contracts and student privacy

44 participants

All documents mentioned in this meeting are available in this [Google Drive folder](#).

Sara Kloek (Senior Privacy & Tech Fellow, U.S. Department of Education's PTAC) on PTAC vendor contracting resources

- The Privacy Technical Assistance Center (PTAC) provides:
 - Information on student data privacy and confidentiality
 - Guidance for schools to remain compliant with FERPA and other regulations while using new technology in the classroom
- Useful resources:
 - Education stakeholders can call PTAC directly with questions (855-249-3072)
 - [Protecting Student Privacy While Using Online Educational Services](#)
 - Intended to help schools understand obligations under FERPA and how to work with ed-tech companies
 - Schools must obtain consent to share PII or infer that arrangement with vendor meets FERPA's exception to obtaining written consent
 - [Protecting Student Privacy While Using Online Educational Services – Model Terms of Service](#)
 - Provides examples of clauses in contracts that could help or hurt FERPA compliance, such as data ownership or licensing
 - PTAC hopes to expand on the current resources based on information from schools, districts, and states on what issues they face and what new technologies are emerging
- COPPA
 - Governs collection of PII from children under the age of 13 on the internet
 - *May* apply to education services
 - Obligation to comply resides with a company, not the school, to obtain parental consent
 - Enforced by FTC. [FTC's FAQ page](#) contains section on how schools may give consent in lieu of parent

Linnette Attai (vendor and school district consultant) on common concerns vendors raise on school contracts

- Districts are looking at federal laws, state laws, and their district's policies; vendors are also looking at all of those, but for all 50 states and 14,000 districts.
- View the contracting process as a partnership, not who has the leverage in the contracting process. The final contract should be a mutual fair agreement with instructions and expectations.
- If a vendor's practices are already compliant with state law, it is best for the contracting requirements to be directly lifted from the law as opposed to paraphrased.
- When you are looking at the contract:
 - Make sure you understand all clauses and any boundaries; you don't want to just use a clause from someone else's contract without understanding why it is there.
 - Going back and forth with the vendor about contract clauses is a good thing: it is an opportunity for district and vendor to engage in dialogue to understand *why* differences

exist. There is generally no one-size-fits-all school or vendor, so a contract needs to be negotiated to ensure it fits both parties.

- Frequently, vendor/district disputes occur because a contract term the district is proposing cannot work operationally, may not be applicable to what that vendor does, or the vendor and district disagree on the interpretation on a clause.
 - i.e. - data deletion once the contract expires, how long will a district be willing to wait for data to be deleted?
 - i.e. – if vendor is not engaged in research, contract clauses should not focus on research
- I have frequently seen district contracts that unintentionally misstate the law
 - Understand the law fully before entering negotiations
- Be mindful of errors and ambiguities which can make a contract clause invalid and/or unenforceable
- By ensuring a contract has clear language, well defined terms, and is aligned with the state or federal law, districts and vendors can help ensure it is enforceable.
- Recommended reading: [Fordham CLIP report on Privacy and Cloud Computing](#)
 - This paper is helpful because it has recommendations for what types of clauses should be in a contract and provides a framework for the contract.

Dana Greenspan (Ventura County Office of Education, California Educational Technology Professionals Association [CETPA]) on adopting the SDPC model California vendor contract

- CETPA worked closely with Student Data Privacy Consortium (SDPC) and modeled work originally done by Cambridge Public Schools.
- [Student Data Privacy Consortium \(SDPC\)](#)
 - Groups of districts have banded together in 13 member states (including [California](#)) to create model contracts and registries of vendors being used that can be accessed by other districts and by the general public. The registries currently have 350+ vendors.
 - Coming soon for members: SDPC contract building tool
 - Lists contract clauses, identifies purpose, and if they satisfy regulation(s)
 - Allows state/district to pick and choose the best model contract clauses for their jurisdiction/individual circumstances.
- Background
 - [California state law AB1584](#) required school districts to vet their contracts, but many districts didn't have the capacity to do so.
 - Ventura County created an E-Safety task force in January 2015
 - Representation from all 20 districts.
 - Districts wanted a state-wide registry to see which applications were vetted and how other districts handled their contracts.
 - CETPA paid SDPC membership fees for all California districts to have access to SDPC's registry, which has worked well so far.
- This resulted in the [California Student Data Privacy Agreement](#), which is one statewide vendor contract that is compliant with federal and state law and is privacy protective.
 - Drafting Process
 - Vendors were included in the conversation and drafting process
 - We created a Microsoft One Note notebook which included federal legislation and a deconstruction of state legislation (AB 1584, SOPIPA). It also analyzed potential contract clauses in relation to state legislation.
 - The draft was shared with legal counsel, LEAs, vendors, PTAC, and the state Attorney General, and we received feedback from all parties.
 - Why is this model contract different?

- There is an overview that accompanies the contract which introduces the state legislation, the intent of the contract, how to use the contract, and how it is intended to be a partnership between districts and vendors.
- What is in the contract?
 - Spells out vendor responsibility and LEA responsibility as custodians of the data.
 - Included “exhibits” at the end of the contract to minimize red lining
 - Exhibit A: allows the vendor to describe their services so everyone understands what the vendor does;
 - Exhibit B: allows the vendor to identify what data they collect;
 - LEA should then identify from that list what they are going to be using.
 - Exhibit C: provides pertinent definitions;
 - Exhibit D: allows the vendor to list any enhanced security measures they will take (adding this was a request from vendors).
 - General Offer of Term
 - This allows other districts to ‘piggy-back’ off of a contract between a vendor and a district as a ‘subscribing LEA.’
 - Eliminates the need for every single school or district to individually negotiate for privacy, though the LEA will still need to negotiate pricing and other features (as per usual).
 - Allows other vendors to organize contracts and use the best ones

Discussion and Questions

Louisiana’s SEA has created a single agreement per vendor, which LEAs can then opt into. This streamlines the system and reduces negotiating and contracting time.

Howard County, Maryland has a Student Privacy Agreement (uploaded in the Google Drive folder) based on PTAC guidance. HCPSS noted that conversations coming out of the red lining process were productive. They ensured individuals from different sectors (data integration, curriculum development, etc.) were present during negotiations to convey the importance of the contract and provide wider input across the district.

Question: Won’t problems arise when many LEAs are using one contract?

- **Dana’s Answer:** The exhibits at the end of the model contract allow for enough flexibility for vendors to go into detail, describe their services, and any increased security measures. This flexibility in turn may make vendors more amenable to the contract.

Question: There is sometimes a gap between a vendor’s sales/marketing team and the vendor product developers. Is there a list in CA with vendors who are better at delivering what they promise?

- **Dana’s Answer:** Currently, no. Vendors should be encouraged to loop in their developers on student privacy legislation and other requirements so product development can reflect those laws and policies.

Next meeting

February 17: Special meeting on federal government requests for student data from LEAs or SEAs
 March 15: Next K-12 Privacy Leaders meeting.

Attending Organizations

Please note: if you did not email me to say you were on the call, please do! Thank you!

1. Albemarle County Public Schools, VA
2. Butler County Schools, Alabama
3. California Department of Education
4. Cambridge Public Schools, MA
5. Council of School Attorneys, National School Boards Association
6. DC Office of the State Superintendent of Education
7. Fairfax County Public Schools
8. Hampton City Schools, Virginia
9. Howard County Public Schools, MD
10. Idaho Department of Education
11. Kansas State Department of Education
12. Los Angeles Unified School District, CA
13. Loudoun County Public Schools, VA
14. Louisiana Department of Education
15. North Dakota EduTech
16. Office of State CIO, OR
17. PlayWell, LLC
18. U.S. Department of Education Privacy Technical Assistance Center
19. San Francisco Unified School District, CA
20. Ventura County Office of Education, California
21. Wisconsin Department of Public Instruction
22. Wyoming Department of Education