

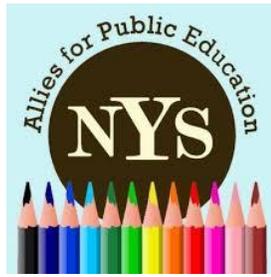
Updated CSM and NYSAPE concerns with the Parent Bill of Rights, the Student Privacy website, the need for public input and enhanced oversight and enforcement of the law

Omissions in draft Parent Bill of Rights dated 2/28/17

- Links to WRONG list of data elements at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>
Current list as of 2/24/2017 is posted here:
<http://www.p12.nysed.gov/irs/sirs/NYSEDDataElements2016.xlsx>
- In addition, merely linking to this spreadsheet is not sufficiently compliant with New York State Education Law Section 2-d, which states in section 3 (b)4 that the Parents Bill of Rights (PBR) should make available for public review, “***A complete list of all student data elements collected by the State*** “. Either in the PBR or on the website there should be that list which now can be discerned only by looking at the SIRS manual. For example, just looking at the spreadsheet one would have no idea that the personal student data collected by the state includes many types of disabilities, suspension data, and/or whether a student who has been enrolled in US schools for less than 3 years and thus called an “Immigrant”, under the Program Service Code.
- The PBR needs to include a list of specific state contractors that receive personal student, teacher or principal data, as specified in Section 3 (c) of the law: “***The parents bill of rights for data privacy and security shall include supplemental information for each contract an educational agency enters into with a third-party contractor...and shall include (1) the exclusive purposes for which the student data or teacher or principal data will be used.***” Etc. This clearly indicates that the PBR should include the names of third party contractors with whom NYSED shares data, and well as for what purposes.
- Also, see section 3 (c) 2,3,4,5 of the PBR, requiring that the Bill of Rights include information as to the security provisions used by each contractor which receives data from the State, when the agreement expires, how parents, students, teachers etc. can challenge the accuracy of the data they hold., where the data will be stored, and under what conditions.
- Instead the draft document only seems to repeat these terms as a general requirement for other LEAs – leaving out itself.
- The PBR should also state the methodology required for encryption – and not just say “as specified in Education Law Section 2-d” but cite more specifically “Section 13402(H)(2) of Public Law 111-5.”

Improvements needed for website at <http://www.nysed.gov/student-data-privacy>

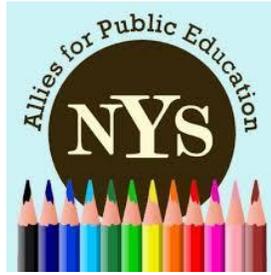
- Though the website now links to [New York State Education Law Section 2-d](#) it omits a link to [Section 2-c. Release of student information to certain entities](#)



- Nowhere on the website either in the Resources section or the PBR does it mention the NY Personal Privacy Protection law, which is stronger in certain respects than federal laws regarding student privacy.
- Nowhere on the site either in the Resources section or the PBR are included additional federal student privacy protections in IDEA and the NSLA (National School Lunch Act)
- The site should also include a user-friendly list of personal student data elements collected by the state as well as why each of these personal data elements are being collected -- see Section 4 (b) ***“with an explanation and/or legal or regulatory authority outlining the reasons such data elements are collected and the intended uses and disclosure of the data.”*** (see above section on PBR)
- The site should include a way for a parent to ask questions, raise concerns or ask for the information of what specific data the state holds for one’s child. Only a data-breach complaint form and website feedback form are now posted.
- There should be contact info for the CPO added, including email and phone no. and a description of his/her role under the state law.
- FAQ should answer the question about whether the privacy rights of students at charter schools are protected by the law.
- FAQ doesn’t make clear if districts and schools must have contracts before disclosing personal data to 3rd parties who are providing “services”, including researchers– only that if there are contracts, that they must include certain restrictions and abide by the provisions in the law.
- FAQ should include fact that parents have right to ask state for a copy of the personal data they hold for their child, as well as who it has been shared with – and to make this available within 45 days as FERPA requires.
- FAQ should cite that the data should be encrypted and protected by conditions specified under “Section 13402(H)(2) of Public Law 111-5” and explain what that means.
- FAQ should also make clear that the Parent Bill of Rights is supposed to be expanded with input from public including stakeholder groups – Section 5 (d): ***The chief privacy officer with input from parents and other education & expert stakeholder, shall develop additional elements of the parents’ bill of rights...etc.”***

Problems with enforcement

- Many districts (including NYC) fail to post the temporary Parents Bill of Rights or link to it. See for comparison: <http://schools.nyc.gov/NR/rdonlyres/596D9F3C-4938-4DB0-95B7-A0F1D9F44A3B/0/NYCDOEParentBillofRightsforDataPrivacyandSecurityEnglishversion.pdf>
- They also do not inform regularly parents of their rights under FERPA to opt out of directory information, as required under FERPA.
- In other instances, districts are not posting with their PBR the information about each contractor they share data with, for what purpose and under what conditions.



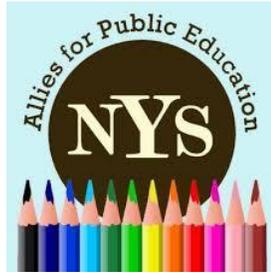
- They are allowing teachers and others to share data via click wrap agreements, which are not contracts, and without seeing whether the privacy policies and agreements comply with the law.
- As mentioned above, many districts including NYC are now administering the PSAT and SAT to students in school, without ensuring that their data will not be sold, as is the customary practice of the College Board.
- There are many other problems with enforcement and district lack of compliance too numerous to go into detail here.

Need to develop an expanded Parents Bill of Rights:

- According to law, the CPO is required to solicit the input of parents and other stakeholders to help develop “*additional elements of the Parents bill of rights*” before it is released for public comment and put into final form. Same with regulations. When will this occur?
- We urge you to hold public hearings throughout the State to gain input from parents, district officials, educators, and other stakeholders vis-à-vis their privacy concerns and what should be incorporated into the PBR, as well as solicit input through the website.
- After this occurs, the proposed PBR should be drafted and made publicly available during a 45-day period of public comment, pursuant to proper notice, during which time interested parties would be allowed to submit comments online, to be posted by NYSED and answered by the CPO.
- In addition, the CPO, along with Commissioner, is required to promulgate regulations that establish standards to govern educational agencies’ data security and privacy policies, and to develop one or more model policies for them to use.

Need for a Stakeholder Data Advisory Panel:

- NYSED promised the US Department of Education in 2009 in exchange for a \$7.8M federal grant that a permanent advisory board would be created, called the Statewide Stakeholder Advisory Panel, to oversee the collection, storage and disclosure of student data in the State Longitudinal Student Database. (See <http://nces.ed.gov/programs/slds/pdf/NewYork2009.pdf>)
- This board, we believe, should be enacted by regulation, include representatives from stakeholder groups and privacy and security experts, be subject to open meetings law, and should help guide the state on an ongoing basis on the responsible collection, use and disclosure of personal student data. The creation of a temporary advisory workgroup, while potentially useful as a stop-gap measure, does not fulfill the same need as a permanent board that would give expert guidance as well as solicit public input on these important questions on a long-term basis.



Additional concerns with the state's collection of personal student data

- The state collects much personal information about immigrant students that could put their future at risk if accessed by ICE officials or others. For example, the current list of mandated data elements includes a student's country of birth, whether the student is an immigrant (defined as born outside US and not attending school in any of the states for more than 3 years); as well as migrant status. We are also concerned about the collection of detailed personal student suspension and disability data.
- Why is so much of this data required, and how is it to be protected from disclosure? Which of these personal data elements is the state required to collect on an individual student level, rather than as aggregate data from schools?