

Guidance for schools on Parents' Bill of Rights Implementation

Educational agencies are required to protect student data in accordance with numerous privacy laws, particularly the Family Education Rights Privacy Act (FERPA) and New York's Education Law § 2-d. Education Law § 2-d requires that educational agencies publish a Parents' Bill of Rights (PBOR) on their website and include it with every contract the educational agency enters with a third-party contractor or vendor where they will be receiving student data or teacher or principal data. This guidance reviews the PBOR and clarifies implementation for educational agency leaders and data protection officers.

1) Commercial and marketing purposes prohibited:

The PBOR states that a child's personally identifiable information (PII) cannot be sold. It cannot be used for any commercial or marketing purpose. It cannot be shared with an unauthorized person.ⁱ

- A student's PII cannot be sold by anyone.
- A student's PII cannot be sold or released for any marketing or commercial purposes by the educational agency, or any third-party contractor or subcontractor. This includes PII that has been designated as directory information by the educational agency.
 - *Commercial or Marketing Purpose means the sale of student data; or its use or disclosure for purposes of receiving compensation, whether directly or indirectly; the use of student data for advertising purposes, or to develop, improve or market products or services to students.*
- An educational agency cannot facilitate the use or disclosure of PII by any other party for commercial or marketing purposes or permit another party to do so.

2) Parents have the right to inspect and review their child's education records:

The PBOR states that parents have the right to inspect and review the contents of their child's education records from the educational agency. Both parents and eligible students have the right to see these records within 45 days.ⁱⁱ

An educational agency must ensure that it has a point of contact for parents making this request, preferably the Data Protection Officer.

- Parents and eligible students also have the right to inspect and review any personal data collected or stored by a third-party contractor and to challenge its accuracy.
- Additionally, FERPA provides parents and eligible students the right to seek to amend the education record if they believe there are inaccuracies.

ⁱ Ed Law 2-d(3)(b)(1), 8 NYCRR § 121.2(a) and 8 NYCRR § 121.12(b)

ⁱⁱ Ed Law 2-d(3)(b)(2) and 8 NYCRR § 121.12(a), 8 NYCRR § 121.12(c) and 8 NYCRR § 121.12(e)

3) Protection of PII:

The PBOR states that State and federal laws protect the privacy of students' PII. A student's PII must be protected using high standards and best practices. Some of these practices include encryption, firewalls, and passwords to protect data.ⁱⁱⁱ

- Privacy laws including, but not limited to FERPA and Education Law § 2-d prohibit the improper disclosure of PII derived from education records.
- The Commissioner's regulations require that educational agencies adopt the NIST Cybersecurity Framework as their cybersecurity standard.^{iv} Schools should adopt the most recent version.
- Encryption is required to protect student data at rest and in transit.^v
 - Student data must be encrypted when it is emailed.
 - Schools must require third party contractors to use encryption at rest and in transit.^{vi}

4) Privacy Complaints:

The PBOR notifies parents that they have the right to file a complaint about possible breaches and unauthorized disclosures of PII and have it addressed.^{vii}

- Parents should first attempt to resolve the complaint with their school.
 - Educational agencies must have information on their website about who complaints can be filed with, preferably the Data Protection Officer.
 - Include contact name, mailing address, email address and phone number.
- If parents are unable to resolve the complaint at the school level, or if they prefer to bring their complaint to NYSED's Chief Privacy Officer, they may do so by writing or emailing to:

Chief Privacy Officer
New York State Education Department, Room 152EB
89 Washington Avenue
Albany, New York 12234
Privacy@nysed.gov

- Parents have the right to be informed in writing of the findings of any investigation into their complaint conducted by the educational agency or NYSED within 60 days.
 - If the educational agency requires additional time, or if a response may compromise security or impede a law enforcement investigation, the educational agency shall provide the parent who filed a complaint with a written explanation that includes the approximate date when the district anticipates that it will respond to the complaint.

ⁱⁱⁱ *Ed Law 2-d(3)(b)(3)*

^{iv} *8 NYCRR § 121.5(a)*

^v *Ed Law 2-d(5)(b)(2)*

^{vi} *Ed Law 2-d(5)(f)(5)*

^{vii} *Ed Law 2-d(3)(b)(5); 8 NYCRR § 121.4*

5) Inventory of Data Elements collected by the State:

The PBOR must tell parents how to obtain a list of all data elements collected by the State.^{viii}

- <https://www.nysed.gov/data-privacy-security/student-data-inventory>
- Or by writing to:
Chief Privacy Officer
New York State Education Department, Room 152 EB
89 Washington Avenue
Albany, New York 12234
Privacy@nysed.gov
- The State Education Department provides the date on which the list was last updated.

6) Annual Notice of Parents' rights:

The PBOR states that parents must be notified annually of their rights to inspect and review their child's education records stored by their educational agency.^{ix}

- The educational agency's FERPA notification satisfies this requirement.
 - Two separate notices (one for FERPA and one for Education Law § 2-d) are not required.
 - Schools may maintain their annual FERPA notification on their website but are still required to provide notice to parents and eligible students annually as to where it can be accessed.

7) Student Data Breaches:

The PBOR states that parents have the right to be told if their child's data is compromised.^x

- Educational agencies must notify parents and eligible students in the most expedient way and without unreasonable delay but no more than 60 calendar days after the discovery of a breach or unauthorized release occurs.
- Educational agencies must also notify the New York State Education Department's Chief Privacy Officer of a breach or unauthorized release no more than 10 calendar days after it receives notice from a third-party contractor or upon discovery or report of an unauthorized release of student data.
 - Notification must be submitted on one of the two forms located at: <https://www.nysed.gov/data-privacy-security/educational-agencies-report-data-privacysecurity-incident>.
 - NYSED will ensure parent notification is made by the educational agency.

^{viii} *Ed Law 2-d(3)(b)(4)*

^{ix} *8 NYCRR § 121.12(d) and add FERPA citation*

^x *Not Required – added for clarity: 8 NYCRR § 121.10(e)*

8) Contracts:

a) Data Minimization

Educational Agencies are *required* to take steps to minimize their collection, processing and transmission of PII and therefore must limit third party contractor access to PII to those who need access to provide contracted services. Only the specific data elements that are *necessary* for those services will be shared with third-party contractors^{xi}.

b) Confidentiality/Data Protection

Educational agencies are *required* to have provisions in their contracts or in separate data protection agreements that require the confidentiality of shared PII in accordance with federal and State laws and the educational agency's data security and privacy policy.^{xii}

c) Data Duration and Destruction

Educational agencies are *required* to have provisions in their contracts or in separate data protection agreements that clearly state the duration of the agreement and what will happen to the PII upon expiration. This will address whether, when and in what format the PII will be returned to the school and/or when and how the PII will be destroyed by the third-party contractor.^{xiii}

d) Supplemental Information

Educational agencies are *required* to develop and post on their website supplemental information for each contract that they enter into with a third-party contractor that will receive PII. The supplemental information must include:

- i. The purpose of the contract,
- ii. How the contractor will abide by data protection and security requirements including, FERPA and Education Law § 2-d,
- iii. The contract's expiration date and what will happen to the PII upon expiration,
- iv. How a parent can challenge the accuracy of the data,
- v. Where the data will be stored and data privacy and security measures in place to protect the PII, and
- vi. How the data will be protected using encryption at rest and in transit.^{xiv}

^{xi} 8 NYCRR § 121.2(b)

^{xii} 8 NYCRR § 121.2(c)

^{xiii} 8 NYCRR § 121.3(c)(3)

^{xiv} 8 NYCRR § 121.3(c)