

Educational Law Sec. 2-D Annual Notice 2023-2024

Third-party contractors that will receive PII must adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework; comply with the data security and privacy policy of the educational agency with whom it contracts; comply with Education Law § 2-d; and the proposed regulations. Contractors are prohibited from selling PII or using it for any marketing or commercial purpose and may not disclose any PII to any other party without the prior written consent of the parent or eligible student. Additionally, where a third-party contractor engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the third-party contractor are applicable to the subcontractor.

§ 121.10 Reports and Notifications of Breach and Unauthorized Release.

Third-party contractors must notify each educational agency with which it has a contract of any breach or unauthorized release of PII in accordance with requirements set forth in the proposed regulations. Educational agencies must report any breach or unauthorized release of PII to the Chief Privacy Officer and notify affected parents, eligible students, teachers and/or principals in the most expedient way possible in accordance with requirements set forth in the proposed regulations. The Chief Privacy Officer is required to report law enforcement any breach or unauthorized release that constitutes criminal conduct.

§ 121.11 Third Party Contractor Civil Penalties.

The Chief Privacy Officer has the authority to investigate reports of breaches or unauthorized releases and impose penalties on third party contractors for unauthorized releases or breaches of PII in accordance with requirements set forth in the proposed regulations.

§ 121.12 Right of Parents and Eligible Students to Inspect and Review Students Education Records.

Consistent with FERPA, parents and eligible students shall have the right to inspect and review a student's education record by making a request directly to the educational agency in a manner prescribed by the educational agency. Educational agencies must verify the identity of the requestor before releasing the records. Educational agencies are required to notify parents annually of their right to request to inspect and review their child's education record including any student data stored or maintained by an educational agency.

§ 121.13 Chief Privacy Officer's Powers.

The Chief Privacy Officer shall have the power to access all records, reports, audits, reviews, documents, papers, recommendations, and other materials maintained by an educational agency that relate to student data or teacher or principal data, which shall include but not be limited to records related to any technology product or service that

will be utilized to store and/or process personally identifiable information as further described in the proposed regulations. Additionally, the Chief Privacy Officer has the right to exercise any other powers that the Commissioner deems appropriate.

§ 121.14 Severability.

If any provision of this part or its application to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or their application to other persons and circumstances, and those remaining provisions shall not be affected but shall remain in full force and effect.