Student Privacy State Legislation: Trends Since 2013 in the United States

Amelia Vance, Sara Collins, Keith Earls, and Tyler Park
Future of Privacy Forum
The Siegl Risk Framework

An actual security or privacy risk
Risk of not being in compliance
Perception risk

Credit: Jim Siegl, Fairfax County Public Schools, Virginia
Landscape of Privacy Concerns

The Scope and Type of Data Schools Collect

A Lack of Transparency
  Who is collecting and accessing student data?
  How is student data being used?
  The “cloud” and other amorphous terminology + jargon

Privacy Beyond Data
Landscape of Privacy Concerns

Primary Concerns
- Commercialism
- Putting students on “tracks”
- Historical discrimination
The Family Educational Rights and Privacy Act (FERPA)

Passed in 1974

Applies to educational agencies and institutions

Enforced by Department of Education

Penalty for noncompliance is loss of federal funding – but has never happened
FERPA grants parents or eligible students the following rights:

- Right to annual notification of the EAI’s FERPA policy
- Right to access education record
- Right to seek amendment or correction of record
- Right to confidentiality of personally identifiable information in record
- Right to file a complaint
Key Exceptions to Consent

Directory information
School Official
Studies
Audit or Evaluation
Protection of Pupil Rights Amendment (PPRA)
Children’s Online Privacy Protection Act (COPPA)

Applies to operators of commercial websites or online services that:

- Are directed to children and collect personal information from children under 13; or
- Have actual knowledge that they collect personal information from children under 13

Enforced by FTC and State AGs

Penalty for noncompliance is civil penalties up to $41,484 per violation (per record, per day)
COPPA Basics

Covered operators must:

- Provide a privacy policy
- Obtain verifiable parental consent
- Provide parents with access (and deletion rights) to their child’s personal information
- Give parents the opportunity to withdraw consent

COPPA in Schools: Like FERPA?
States Have Passed 125 Laws Since 2013

41

Legislates Vendors and SEAs and/or LEAs
Legislates Vendors
Legislates SEAs and/or LEAs
Introduced but did not pass into law
Questions Raised By Laws

Collection
- What information is collected?
- How is information collected?
- Is consent needed?

Access
- Who can access the information?

Sharing
- When can data be initially shared?
- When can data be redisclosed?
Two Types of Laws

Governing LEAs/SEAs
Governing Vendors (directly or indirectly)
## State Student Privacy Laws

### Passed 2013-2017

<table>
<thead>
<tr>
<th>Year Passed</th>
<th>State</th>
<th>BILL NUMBER</th>
<th>High Level Summary</th>
<th>Early Ed (Y/N)</th>
<th>K-12 (Y/N)</th>
<th>Higher Ed (Y/N)</th>
<th>Legislating Vendors (Y/N)</th>
<th>Legislating SEAs (Y/N)</th>
<th>Legislating LEAs (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>Arizona</td>
<td>SB 1450</td>
<td>For school districts that release directory information to educational and occupational recruiters, they must provide students with the opportunity to opt-out of that release. Student transcripts can't be released unless the student consents in writing.</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>2016</td>
<td>Arizona</td>
<td>HB 2088</td>
<td>An Act Relating to School Accountability. Requires the Department to compile an annual achievement profile - any disclosure of educational records compiled by the Department of Education must comply with FERPA.</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>2014</td>
<td>Arizona</td>
<td>PE2060</td>
<td>HB 2088 prohibits public schools from administering specified assessments or surveys to students without notifying and obtaining written informed consent from parents and requires notice for</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
</tbody>
</table>
Louisiana schools struggle with strict privacy law

In Louisiana, a new law bars school districts from sharing student data for purposes other than education. The law is intended to protect student privacy, but it's also causing unintended consequences for some districts.

State Withholds High School Graduation Rates

By Nate Robson July 29, 2015

New State Law Complicates Classroom Recording For N.H. School Districts

By RICKGANLEY & MICHAEL BRINDLEY • NOV 11, 2015

A new state law limiting when record in classrooms is having consequences for some New Hampshire school districts.
Interestingly Trends

- Transparency
- Opt-in and Opt-Out
- Device and social media privacy
- Penalties (financial and criminal)
- Research restrictions
- Training and Resources
Coming Up?
“While the idea of identifying a child's strengths and weaknesses and using that information to help them make decisions about their future is a good idea, the United Nation's idea of data collection and globalizing our nation's children, making them human capital, is unamerican and Hitleresque.”
Pearson Tested 'Social-Psychological' Messages in Learning Software, With Mixed Results

By Benjamin Herold on April 17, 2018 10:05 AM
Portland State University Researchers May Have Violated Federal Law by Using the Personal Data of Thousands of Portland-Area K-12 Students

It appears to be a remarkable breach of trust.
‘Dark Overlord’ Hackers Text Death Threats to Students, Then Dump Voicemails From Victims

The same hackers who tried to extort Netflix have moved onto another target: schools.

Earlier this week, the Johnston Community School District in Iowa closed several of its schools, after parents received text messages threatening to harm or kill their children, according to multiple local media reports. Now, a group of hackers, who have traditionally tried to extort money from targets through blackmail or intimidation, has claimed sending the messages and has
What Parents and Teachers Should Note From Mark Zuckerberg’s Senate Testimony

By Jenny Abamu and Tina Nazerian  Apr 10, 2018
Understanding Calif.’s Game-Changing Data Protection Law: The California Consumer Privacy Act of 2018

For any company that has assets in California or handles Californians’ personal information, California’s new Consumer Privacy Act of 2018 will likely have a significant impact on core business operations.

By Emily Tabatabai, Antony Kim and Jennifer Martin | July 10, 2018 at 05:01 PM
Questions?

Amelia Vance, Director of Education Privacy and Policy Counsel, Future of Privacy Forum
avance@fpf.org